

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 382 of 2010**

- Jayesh Kumar Bawariya s/o. Shri Chhavganlal Barawiya, aged about 38 years r/o. Narayan Tailors, Station Road, Raipur, District Raipur (CG)

---- Appellant.

Versus

1. Patel Timber Company through Ashish Timber Company, village Rauva, Tahsil Dhardseenwa, District Raipur (CG).
2. Haribhai Patel, s/o. Shri Nathubhai Patel, partner, Patel Timber Company r/o. C-15, Sector 1, Devendra Nagar, Raipur, district Raipur (CG).

---- Respondents

For the Appellant : Mr. Pragalbh Sharma, Advocate.

For the respondent :None though served.
No.1.

For the respondent ;None.
No.2.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board**5-10-2018.**

1. This acquittal appeal filed under Section 378(4) of the Cr.P.C., 1973 is directed against the order dated 23-4-2010 passed by the Judicial Magistrate First Class, Raipur (CG) in Criminal Case No. 565 of 2006 related to offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act,

1881”), wherein the said Court dismissed the complaint for want of prosecution.

2. From the perusal of the order sheets it appears that the complaint under Section 138 of the Act, 1881 was filed by the appellant before the said Court. The case was registered on 6-1-2003, notice was issued to the respondent and he was represented through his counsel and it was adjourned for one reason or other upto 25-1-2010. On 23-4-2010 the case was dismissed for want of prosecution. Dismissal of the complaint was not only the option before the trial Court and as per Section 256 (1) of the Code of Criminal Procedure, 1973, the trial Court could have adjourned the case for hearing to some other day, but that is not done.
3. In the matter of **Mohd. Azeem vs. A. Venkatesh and another, reported in (2002) 7 SCC 726**, Hon'ble the Supreme Court held that dismissal on single default of appearance is very strict and unjust attitude resulting in failure of justice.
4. In view of this court, the matter ought to have been decided on merit after recording evidence of both sides and after hearing the parties, but that is not done here, that is why the order passed by the trial Court is not sustainable and the same deserves to be set aside.
5. Accordingly, the appeal is allowed and the order dated 23-04-2010 passed by the trial Court is hereby set aside. Now the

case is remanded back to the trial Court for adjudicating the matter afresh. The trial Court is directed to proceed with the the case as per law and decide the issue between the parties on merit after hearing the parties and after recording the evidence.

6. The appellant shall appear before the trial court on 4-12-2018 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju