

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

ACQA. No. 25 of 2018

Ajay Shukla **Versus** Rajendra Kumar Sonkunwar

10.05.2018	Shri Anand Shukla, Advocate for the appellant. Shri S.M.H. Jafri, Advocate for the respondent. Respondent present in person. Heard on application for grant of special leave for appellant. It is submitted by learned counsel for the appellant that the complaint against respondent given under Section 138 of Negotiable Instrument Act, was dismissed in default vide order dated 12.01.2017. As the default of such dismissal under Section 256 of Cr.P.C, amounts to acquittal of the respondent, hence, this appeal is filed and It is prayed that dismissal of the case may be set aside and the complaint case be restored to its original number. Learned counsel for the State opposes and submits that the appellant/complainant himself committed numerous defaults before the dismissal of the complaint case by concerned Court, hence, for this reason, this appeal does not deserve to be allowed.

Complaint 138 of Negotiable Instrument Act has been filed by the appellant in which cognizance was taken by the trial Court and after issuance of summons the respondent/accused has also appears before the said Court.

The case was fixed on 12.01.2017 on that date the appellant remain absent and his counsel also did not appear, because of which, the complaint has been dismissed in default.

Considering that dismissal in default under Section 256 of Cr.P.C, amounts to acquittal of accused and remedy available is only by way of appeal as it appears that the appellant still wants to prosecute the case and the cause of action still exists, hence, for this reason this acquittal appeal is allowed at the motion stage. The impugned order of dismissal passed by the trial Court is hereby set aside.

Parties are directed to appear before the concerned Court on **20.06.2018**.

Sd /-

(Rajendra Chandra Singh Samant)

Judge