

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.42 of 2018**

- M/s Deepak Tractor And Agriculture Through- Partner Nitin Khandelwal, Aged About 38 Years S/o Late Shri Rajendra Khandelwal, R/o Ring Road No. 1, Bhatagaon Chowk, Raipur, Tahsil And District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Appellant**Versus**

1. Virendra Kumar Verma S/o Shri Keduram Verma Aged About 35 Years R/o- Village And Post Shikari Kesli, P.S. And Tahsil- Simga, District- Bhatapara- Balodabazar, Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. State Of Chhattisgarh Through- Collector, Collectrate Premises, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

 For the appellant : Shri Rishikant Mahobia, Advocate
 For respondent No.1 : Smt. Anubhuti Marhas, Advocate
 For respondent No.2/State: Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****12.9.2018.**

1. Respondent No.1 Virendra Kumar Verma is present in person in compliance of bailable warrant issued against him by this Court vide Order dated 30.7.2018.
2. Also heard on admission.
3. Admit.
4. This appeal has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 against Order dated 11.9.2017 passed by 7th Additional Sessions Judge, Raipur in Criminal Revision No.237/2017 wherein the revision petition filed by the petitioner was dismissed while confirming the order dated 06.4.2017 passed by Judicial Magistrate First Class, Raipur in

Complaint Case No.2548/2016 which was filed under Section 138 of the Negotiable Instruments Act, 1881 and same was dismissed for want of prosecution.

5. Learned counsel for the appellant submits that complaint case before Judicial Magistrate First Class was fixed on 06.4.2017 for stating particulars of the offence to the respondent and it could have been done even in absence of the complainant, because the case was not fixed for hearing i.e. for recording the evidence. He further submits that it was not compulsory for the Magistrate to dismiss the complaint case as per Section 256(1) CrPC. The Court is well within its power in adjourning the case for hearing to some other date.

6. On the other hand, learned counsel for the respondent would submit that the complainant was not present on the said date and the Court had no option but to dismiss the complaint and order passed by the Magistrate is not liable to be interfered with.

7. The point for consideration before this Court is whether the Magistrate had only option to dismiss the complaint. The case was fixed for stating the particulars of offence to the accused/respondent and for stating particulars of offence to the accused person, presence of the complainant was not required. The Court had other option by adjourning the hearing of the case to some other date as per Section 256(1) CrPC. As per the provisions of this Section personal attendance of the complainant is not necessary. If the counsel for the complainant is not

represented when the case is called, the party cannot be punished for any fault on the part of the counsel.

8. In view of this Court, all the cases should be decided on merits and no case should be sent to record room without providing opportunity of hearing to both the side. All the courts are well within their jurisdiction to adjourn the hearing of the cases for another date but the fact remains that every case should be decided on merits after hearing the parties. Therefore, dismissal of the complaint case for non appearance of the complainant is not sustainable looking to the facts and circumstances of the case. The finding recorded by the trial Court (JMFC, Raipur) is not sustainable and the same is set aside. The trial Court is directed to provide opportunity to both the sides and after hearing both the sides shall decide the case on its merits. Both the parties shall appear before the trial Court i.e. JMFC, Raipur on 30.10.2018.

9. Consequently, the Acquittal appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE