

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1701 of 2017**

Dinesh Agrawal S/o O.P. Agrawal Aged About 37 Years R/o Ravindra
Kirana Stores, Camp - 2, Bhilai, Tahsil * District Durg Chhattisgarh. ---
Petitioner

Versus

1. State of Chhattisgarh through District Judge, Durg Chhattisgarh.
2. Yogesh Awasthi S/o Prakash Awasthi, R/o Near Prakash Atta Chhaki,
Nahar Para, Camp - 2, Bhilai, Tahsil & District Durg Chhattisgarh.,
--- **Respondents**

For the applicant	:	Mr. Rudranath Mukherjee, Advocate
For the State	:	Mr. Sangharsh Pandey, Panel Lawyer
For Respondent No.2	:	Mr. Ajay Thakre, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****15.02.2018**

1. Heard.
2. The brief facts of the case are that the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act before the J.M.F.C. After the case was registered, notice of the complaint was served on the respondent. Thereafter on certain single date, the complainant could not keep himself present in person as a result of which the complaint was dismissed, thereby the accused was acquitted.
3. Learned counsel for the applicant would submit that there was a gross misconduct on the part of the clerk of the Court which results in dismissal of the complaint case. The order sheets of the Court below dated 17.11.2015 would show that the date was fixed for 22.12.2015 which was later on changed behind the back of petitioner as 23.12.2015 while issuing the arrest warrant against the accused and thereafter

when the advocate appeared on 22.12.2015, it was informed that the case file is missing and opened the order sheet. He submits that the appearance was noted as 22.12.2015 in ordinary course and on 06.02.2017 the case was fixed for 17.05.2016 and eventually on 19.12.2016, the case was dismissed for default of appearance. Therefore, he submits that one opportunity may be granted to the petitioner by restoring the case.

4. Counsel for respondent no.2 opposes the argument and submits that the order is well merited which do not call for any interference.
5. A perusal of the original record of the complaint case would show that on 17.11.2015 the case was fixed for 22.12.2015 and the noting in the order sheet was made by the counsel at the margin of the order sheet as 22.12.2015. Later on, the order sheet records that after the date noted by the counsel, again the case was taken up and the date was fixed for 23.12.2015. When the matter was taken up on 23.12.2015, the case was fixed for 06.02.2016. Again on 06.02.2016, the case was fixed for 17.05.2016 and when the case was taken up on 17.05.2016 the further date was given as 19.12.2016 and eventually on 19.12.2016, the case was dismissed for non appearance of the complainant.
6. As has been laid down by the Supreme Court in case of ***Mohd. Azeem Vs. A. Venkatesh and another (2002) 7 SCC 726***, the dismissal on single default is a very strict and unjust attitude resulting in failure of justice. In the instant case when the petitioner could not appear on single date i.e., 19.12.2016 the case was dismissed.

7. Prima facie, it appears that primarily the fault was committed by the concerned Clerk of the Court in giving date as the date 22.12.2015 was changed to 23.12.2015 in absence of counsel. The order sheets record that since the date of filing of the complainant case i.e., 13.01.2015, the appearance of the counsel for the petitioner is being marked and at the right margins of the order sheets, he continuously uses to take note of the next dates so fixed. Therefore, it shows that when the matter was taken up on 17.11.2015, the next date was given as 22.12.2015 and after the order is recorded, the counsel marked his presence and noted next date given as 22.12.2015 and after such recording of the order, another date i.e., 23.12.2015 was given behind the back of the petitioner. Therefore, there was discrepancy in recording the order dated 17.11.2015 and in such circumstances, if the dismissal of the case is allowed to be continued, it may result in failure of justice.
8. Taking into the nature of facts and circumstances of the case and in view of the law laid down in *Mohd. Azeem Vs. A. Venkatesh (2002) 7 SCC 726*, the order dated 19.12.2016 is set aside. Consequently, the revisional order dated 22.02.2017 passed by the Special Judge, Durg, in Criminal Revision No.17/2017 is also set aside. The Complaint Case No. 2890 of 2015 filed under section 138 of the Negotiable Instruments Act is restored to its original number. The parties shall appear before the Court below on 27.03.2018.

Sd/-
GOUTAM BHADURI
JUDGE