

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 266 of 2018**

Santosh Kumar Yadav S/o Shivram Yadav, aged about 36 years
R/o Shankar Nagar, Ward No. 18, Champa Road, Police Station
Janjgir, District Janjgir-Champa (C.G.) ---- **Appellant**

Versus

Ramkumar Swarnkar S/o Kanhaiyalal R/o B. D. Mahant, Upnagar,
Ward No. 06, Janjgir, Police Station Janjgir, District Janjgir-Champa
(C.G.) ---- **Respondent**

For Appellant : Mr. Kishan Lal Sahu, Advocate.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

21/08/2018

1. Heard on admission.
2. Admit.
3. This is an acquittal appeal filed under Section 378 (4) of the Code of Criminal Procedure, 1973 against the order dated 10.01.2018 passed by learned Chief Judicial Magistrate, Janjgir, District-Janjgir-Champa (C.G.) in Complaint Case No. 48/2017, whereby the complaint filed by the appellant/complainant was dismissed and respondent was acquitted of the charges under Section 138 of Negotiable Instrument Act, 1881 for the reasons of non-appearance of the appellant.
4. The complaint was filed for the offence as aforementioned on 27.03.2017 and it was registered and case was fixed for evidence of appellant on 10.01.2018.
5. Learned counsel for the appellant submits that the dismissal of complaint for only single default is unjust and trial court ought to have dispensed with the attendance of the appellant.

6. On 10.01.2018, counsel of the appellant was out of station as he went to Simga due to professional work and the appellant went to attend funeral of his closed relative on said date, therefore, non-appearance is bonafide.
7. No appearance is made on behalf of the respondent even when the case is called on third round.
8. Perusal of the order of Chief Judicial Magistrate shows that the complaint is dismissed for single default. In the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, the Hon'ble Apex Court has held that dismissal on single default is a very strict and unjust attitude resulting in failure of justice.
9. In the present case, the respondent was acquitted on single default and the same result in failure of justice.
10. Taking into over all facts and circumstances of the case, order passed by trial court/ Chief Judicial Magistrate dated 10.01.2018 is set aside. The case is remanded back to the trial court for adjudicating the matter afresh from the stage of its dismissal after providing opportunity of hearing to both sides.
11. It is directed that both the parties shall appear before the trial court/ Chief Judicial Magistrate, Janjgir-Champa on 25th September, 2018 and the trial court shall proceed further.
12. In view of the above, the appeal stands disposed of.

Sd/-
(Ram Prasanna Sharma)
Judge