

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

ACQA No. 312 of 2018

- Jaydeep Bose S/o S. C. Bose Aged About 30 Years R/o Amar Chowk, Rajatalab, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Appellant

Versus

- Jagat Herpal @ Bholu S/o Shri R. K. Hepal Aged About 37 Years R/o Rooprela Gali, In Front Of Tooth Dairy, Fafadih, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent

For Appellant : Mr. Sachin Nidhi, Advocate.

For Respondent : Mr. J.K. Gupta, Advocate

Order on Board

(24-08-2018)

1. This is an acquittal appeal preferred under Section 378 (4) of Code of Criminal Procedure, 1973 against the order dated 14-12-2016 passed by the Judicial Magistrate First Class, Raipur, in Criminal Complaint Case No. 46 of 2010 wherein the said Court dismissed the complaint for want of prosecution.
2. The appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent and same was registered.

3. Learned counsel for the appellant would submit that dismissal of complaint on default is unjust and opportunity ought to have been provided to adduce evidence.
4. On the other hand, learned counsel for the respondent would submit that sufficient opportunity is provided to the appellant but he did not avail the same, therefore, the order passed by the trial Court is just and proper which is not liable to be interfered while invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record including the order passed by the trial Court.
6. True it is that opportunity has been provided to adduce evidence, but from the record it appears that the witnesses have not been examined. If any trial is terminated without recording the evidence, the same is not complete trial on merit. One opportunity should be provided to the appellant for adducing evidence before the trial Court.
7. Accordingly, the order dated 14-12-2016 passed by the Judicial Magistrate First Class, Raipur is set aside and the case is remanded back to the trial Court for adjudicating the matter afresh after providing opportunity of adducing evidence to both sides.

8. Both parties are directed to appear before the trial Court on 4-10-2018 and the trial court shall proceed further.

9. In view of the above, the appeal stands disposed of.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_