

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 150 of 2017**

M/s Jindal Polyfilms Ltd. Through Deepak Sharaf (Authorized Distributor & Stockist) Office At : 5-Keshav Kunj, Main Avenue Road, Santacruse West Mumbai **Petitioner/appellant**

Versus

1. M/s Global Packaging, Through Semaay Hariramani & Dilip Hariramani (Partners) Office At: Village Amera, Tehsil Palari, District Balodabazar, Chhattisgarh
2. Semaay Hariramani, Parter M/s. Global Packaging, Office At: Village Amera, Tehsil Palari, District- Balodabazar, Chhattisgarh
3. Dilip Hariramani, Partner M/s. Global Packaging Office At: Village Amera, Tehsil Palari, District Balodabazar, Chhattisgarh

..... **Respondents**

For the Appellant	:	Mr. D. Kushwaha, Advocate
For Respondents	:	Mr. Adil Minhaj, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

15.02.2018

1. The instant appeal is filed against the order dated 03.04.2017 passed by the learned Chief Judicial Magistrate in Complaint Case No. S-91/2015 (*M/s. Jindal Polyfilms Ltd. Vs. M/s. Global Packaging & Others*) wherein the complaint filed by the appellant u/s 138 of the Negotiable Instruments Act was dismissed for want of appearance and consequently the accused/respondents were acquitted of the charges.
2. Learned counsel for the appellant would submit that the complaint u/s 138 of the N.I. Act was filed on 17.12.2014 and thereafter, the complainant was appearing along-with advocate, however, in the meanwhile, since certain interlocutory orders was challenged before

the Additional Sessions Judge, the records were requisitioned by the ASJ and thereafter when the records came back to the trial Court, the complainant could not make his presence or representation through his counsel and for single non-appearance, the complaint was dismissed, therefore, the complaint may be restored to its original number and decided on merits.

3. Per contra, learned counsel for the respondents vehemently opposes the same.
4. The case file was called for which shows that the complaint under Section 138 of N.I. Act was filed on 17.12.2014 wherein the Court after perusal of the complaint issue notice to the respondents. Thereafter, the respondents appeared and were bailed out. Subsequently, the complainant appeared either itself or through its Advocate or at times both appeared on the different dates. The order sheet dated 07.12.2016 would show that certain criminal revision was filed before the 3rd Addl. Sessions Judge where the file was requisitioned. The records came back and thereafter a date was given on 08.03.2017 and the complainant was represented through his counsel and thereafter on 03.04.2017, the case was dismissed for want of prosecution as the complainant failed to appear.
5. 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 of appearance is a very strict and unjust attitude resulting in failure of justice. In the instant case, the order sheets would show that on different dates, the complainant appeared and during the pendency of criminal case, at certain point of time, a revision was filed before the ASJ in which the records were requisitioned and thereafter when the file came back to the trial Court, the non-appearance was caused, therefore, it shows that the dismissal order was passed due to single non-appearance on

03.04.2017. It appears that the original record of the complaint case was pending before the Court of Addl. Sessions Judge for adjudication of revision and after disposal of the revision, the record came back and at the same time when the complainant remained absent for single day before the trial Court, the complaint was dismissed. The dismissal is not on merits.

6. As has been laid down in case of *Mohd. Azeem Vs. A Venkatesh (supra)*, the dismissal on single default of appearance amounts to not only very strict attitude but also unjust resulting in failure of justice. Therefore, in the facts and circumstances of the case if the dismissal of complaint is allowed to continue it would lead to irreparable loss and may cause failure of justice.
7. Taking into consideration such facts that the complaint was already registered and no enormous delay appears to have been caused and in view of the law laid down by the Supreme Court in case of *Mohd. Azeem Vs. A Venkatesh (supra)*, the order of dismissal of complaint passed on 03.04.2017 is set aside and the Criminal Complaint Case No. S-91/2015 is restored to its original number. The case is remitted back to the trial Court to adjudicate the same from the stage of dismissal.
8. The parties shall appeal before the trial Court on 20th March, 2018.

**Sd/-
GOUTAM BHADURI
JUDGE**