

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 345 of 2019**

1. Thaneshwar S/o Shri Narayan Sahu, aged about 40 year, R/o Village Boridkhurd, Police Station Rudri, Tahsil and District Dhamtari, Chhattisgarh
--- Applicant

Versus

1. Dhaneshwar Sinha, aged about 27 years, S/o Shri Milan Sinha, R/o Village Dodki, P.S. Arjuni, Tahsil and District Dhamtari (C.G.)

---- Respondent

For Petitioner : Shri Pushpendra Kumar Patel, Advocate.
For Respondent : None.

Hon'ble Shri Justice Goutam Bhaduri**Order**

06/02/2019

Heard.

1. The present petition is against the order dated 16.01.2019 (Annexure- P/1) passed in Criminal Revision No. 98/2018 whereby the order dated 24.07.2018 passed by the learned Judicial Magistrate, First Class, District Dhamtari in Criminal Complaint No. 1261/2017 under Section 138 of the Negotiable Instruments Act, the right to cross-examine the complainant was closed by the revisional Court.

2. Learned counsel for the petitioner submits that complaint was filed by the respondent under Section 138 of the Negotiable Instruments Act wherein on 24.07.2018 the complainant was examined, the petitioner/accused though was present but since his advocate was absent he could not cross-examine the complainant. He further submits that petitioner/accused was very much present but for want of prosecution he could not cross-examine therefore, one opportunity may be given to the petitioner/accused as otherwise he will lose his right for all the time to come.

3. Heard learned counsel for the petitioner and perused the order

of Judicial Magistrate, First Class dated 24.07.2018 which has been affirmed by the Revisional Court on 16.01.2019. The fact would suggest that on 24.07.2018 the petitioner/accused though was present but his counsel was not present therefore, his right to cross-examine the complainant was closed for absence of the advocate of the petitioner/accused. It appears that on a single date for non-appearance of the counsel of the petitioner/accused the right to cross-examine has been closed.

4. Be that as it may, the parties cannot be punished for the fault of the advocate. Further taking into the facts of the case that no erroneous fault is apparent on the face of the record which would show that higher degree of prejudice has been caused. Under this circumstances, the Court is of the opinion that one opportunity may be granted to the petitioner/accused to cross-examine the complainant. As a result, the petition is allowed subject to cost of Rs.1500/- to be paid to the complainant. It is further observed that on payment of cost the complainant shall make himself present for cross-examination for one more time and no further opportunity shall be granted to the petitioner/accused if he fails to appear before the Court on the next date of hearing.

5. With the aforesaid observation, the petition is disposed of.

Sd/-

(Goutam Bhaduri)
JUDGE