

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 711 of 2019

- Arun Beej Bhandar Prop. Arun Kuamr Gajendra S/o Late Ghanshyam Gajendra, aged about 48 years, R/o Daily Market, in front of Purana Bus Stand, Kanker, Tahsil and District Kanker (C.G.)

---- Applicant

Versus

- Radha Traders Prop. Sanjay Singhal S/o Surendra Singhal, aged about 48 years, R/o Raipur Road, Dhamtari, Police Station and District Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. Anil Gulati, Adv.
For Respondent	:	Mr. Shumit Shrivastava, Adv.

Hon'ble Smt. Justice Rajani Dubey

Order on board

29.07.2019

1. With the consent of learned counsel appearing for the parties, the revision is heard finally at the motion stage.
2. The present revision is preferred against the order dated 28.03.2019 passed by Additional Sessions Judge, Dhamtari in Criminal Appeal No. 99/2018, whereby the learned Additional Judge has dismissed the appeal preferred by the applicant, for want of prosecution.
3. Facts of the case, in short, are that vide the judgment dated 16.11.2018 passed in Criminal Case No. 02/2016 by Judicial Magistrate First Class, Dhamtari, District Dhamtari, convicted the applicant for offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo S.I. for six months and to pay compensation of Rs. 8,60,000/-. Being aggrieved by the judgment dated 16.11.2018, the applicant

preferred an appeal before the Sessions Court, Dhamtari. On 28.03.2019 appeal was fixed for final hearing. Since, the applicant was not present before the Court on 28.03.2019, the Appellate Court dismissed the appeal for want of prosecution.

4. Learned counsel for the applicant submits that the order passed by the learned Appellate Court is bad in law. The admitted appeal was to be heard on merits and it could not be dismissed for want of prosecution and the appeal must have been disposed of on merits after examining the records of the case. Learned counsel for the applicant placed reliance on **[(1996) 3 Crimes 54 (SC)] (Bani Singh v. State of U.P.)**, Therefore, the impugned order dated 28.03.2019 passed by the Appellate Court is illegal and its deserved to be set-aside.
5. Learned counsel appearing for the respondent also supports the above submission made by learned counsel for the applicant.
6. I have heard learned counsel appearing for both the parties and perused the records.
7. In **[(1996) 3 Crimes 54 (SC)] (Bani Singh v. State of U.P.)** it has been held by the Hon'ble Supreme Court that once the Appellate Court has admitted an appeal for hearing on merits, it cannot dismiss the appeal for non-appearance of the applicant. The appeal must be disposed of on merits after examining the record of the case and after giving an opportunity of hearing to the applicant or his counsel, if he is present, and to the public prosecutor.
8. In view of the law laid down by the Supreme Court in **Bani Singh Case** (Supra), I am of the considered opinion that in the case in hand, the Appellate Court erred in dismissing the criminal appeal preferred by the Applicant for want of prosecution simplicitor without going through the merits of the case.
9. Resultantly, I set aside the impugned order dated 28.03.2019 passed by the Additional Sessions Judge in Criminal Appeal No.

99/2018. The matter is remanded to the Additional Sessions Judge for fresh adjudication of the appeal on merits. The appellate Court is directed to decide the appeal on merits after giving an opportunity of hearing to the Appellant/applicant herein. The appellate Court shall decide the appeal as early as possible preferably within a period of 6 months from the date of receipt of this order.

10. Accordingly, the instant revision is allowed in the aforesaid terms.

Sd/-
(Rajani Dubey)
JUDGE