

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.480 of 2019

Tekram Sahu, S/o Shri Dharmu Sahu, aged about 48 years, Proprietor Sahu Furniture Mart, In front of Tahsil Court Mahasamund, R/o Clubpara Mahasamund, Civil and Revenue District Mahasamund, Chhattisgarh

---- Appellant

versus

Ramkumar, S/o Shri Puranlal Chandrakar, aged about 50 years, R/o Village Birkoni, Thana and Tahsil Mahasamund, Civil and Revenue District, Mahasamund, Chhattisgarh

--- Respondent

For Appellant : Shri Sunil Sahu, Advocate
For Respondent : Shri Mayank Chandrakar, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

24.9.2019

1. The instant appeal has been preferred against the order of acquittal dated 2.5.2019 passed by the Judicial Magistrate First Class, Mahasamund in Criminal Complaint Case No.12 of 2014, whereby the Judicial Magistrate has dismissed the criminal complaint case for want of prosecution and acquitted the Respondent/accused of the charge under Section 138 of the Negotiable Instruments Act.
2. I have heard Learned Counsel appearing for the parties and perused the record with due care.
3. It appears from the order-sheets of the Trial Court that particulars of the offence were prepared and explained to the Respondent/accused on 29.9.2015. Thereafter, date was given for

evidence of the Complainant/Appellant. Thereafter, the matter continued to be fixed for evidence of the Complainant till 28.3.2019. From the order-sheets, it also reveals that on none of the dates the Complainant appeared before the Trial Court personally nor did he produce any evidence. After 29.9.2015, the Complainant personally appeared for the first time on 11.4.2019. On that date also, no witness was present. On the request of both the parties, the matter was again fixed for 26.4.2019 for evidence of the Complainant. On that date also, neither the Complainant appeared nor did any witness appear. The Trial Court fixed the matter for 2.5.2019. On 2.5.2019 also, neither the Complainant appeared before the Court nor did his any witness appear. Therefore, on 2.5.2019, the Trial Court dismissed the complaint case for want of prosecution.

4. It was argued on behalf of the Appellant/Complainant that though there was grave negligence on the part of the Appellant, looking to the facts and circumstances of the case, the Appellant should be afforded one opportunity to prosecute his case.
5. Learned Counsel appearing for the Respondent/accused opposed the prayer.
6. From perusal of the record it is clear that there was a grave negligence on the part of the Appellant. He was continuously being given opportunity for about 4 years, but neither he appeared before the Trial Court nor did he produce any of his witnesses. The matter relates to bouncing of a cheque. Therefore, it would be in the interest of justice to afford one opportunity to the Appellant/Complainant to prosecute his case.

7. Consequently, subject to deposit of fine of Rs.10,000/- by the Appellant/Complainant before the Trial Court within a period of two weeks from the date of receipt of a copy of this order, he is afforded one opportunity. The amount so deposited shall be paid to the Respondent/accused. Both the parties shall appear before the Trial Court on 2.11.2019. Since then the Trial Court shall allow the Complainant to produce his evidence within a maximum period of 4 months. Thereafter, the Trial Court shall decide the matter in accordance with law.
8. The instant appeal is allowed to the extent indicated above. The impugned order dated 2.5.2019 is set aside.
9. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE