

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 834 of 2019**

- Meeluram, S/o Vrinda Prasad, Aged About 55 Years, R/o Quarter No.104/4, Gajra Site, Bankimongra, Police Station- Bankimongra, Tahsil Katghora, District- Korba, Chhattisgarh.

---- Applicant

Versus

- Ashok Kumar, S/o Baldev Prasad Pandey, R/o Adarsh Nagar, Kusmunda, Tahsil Katghora, District- Korba, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Dharmesh Shrivastava, Adv.
For Respondent	:	Mr. Nitesh Shrivastava, Adv.

Hon'ble Smt. Justice Rajani Dubey**Order on board****25.09.2019**

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 directed against the order dated 18.06.2019 passed by the learned Additional Sessions Judge, Katghora, District Korba, whereby the appeal preferred by the applicant against judgment dated 21.01.2019 passed by the learned judicial Magistrate First Class Katghora was dismissed for want of prosecution.
3. Brief facts of the case, in short, are that respondent (complainant) filed a complaint case against applicant under Section 138 of Negotiable Instrument Act before Judicial Magistrate First Class. After appreciating the oral and documentary evidence, vide judgment dated 21.01.2019, convicted and sentenced the applicant under Section 138 of Negotiable Instrument Act and sentenced him to undergo S.I. for 6 months and fine of Rs. 2,20,000/- of compensation with default stipulation. This order was appealed by the applicant and the

learned Appellate Court on 18.06.2019 dismissed the appeal of the applicant for want of prosecution. Hence this revision.

4. Learned counsel for the applicant submits that the appeal has to be heard on merits after examination of record of case and after giving an opportunity of hearing to the applicant. Therefore, impugned order passed by the Court below is illegal and the same be set aside. Learned counsel for the applicant placed reliance on **[(1996) 3 Crimes 54 (SC)] (Bani Singh v. State of U.P.)**, and this Court's order CRR No. 286/2017 (Budhwar & Ors Vs. State of Chhattisgarh) vide order dated 05.05.2017 and CRMP No. 766/2014 (Laxmi Prasad Soni & another Vs. State of Chhattisgarh) vide order dated 21.11.2014.
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 material available on records.
7. It is clear from the order sheets that the applicant was convicted by judgment of conviction and order of sentence dated 21.01.2019 passed by Judicial Magistrate First Class, Katghora in complaint case No. 1054/2018 wherein the applicant was convicted under Section 138 of Negotiable Instrument Act and sentence to undergo S.I. for 6 months and compensation of Rs. 2,20,000/- with default stipulation.
8. Applicant preferred an appeal before the Additional Sessions Judge, Katghora, which was pending for final adjudication and on 18.06.2019, the appeal was dismissed for want of prosecution. The order sheet would show that on this date neither the applicant nor his counsel was present and the case was dismissed for want of prosecution.
9. 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 or his counsel. 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."

10. 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. Therefore, impugned order dated 18.06.2019 is liable to be and is hereby set aside.

11. Accordingly, the revision petition is allowed and the case is remitted back to the appellate Court for fresh adjudication of the appeal on merits and the appellate Court shall decide the same on its merit in accordance with law after giving opportunity of hearing to the applicant and respondent.

10. Both the parties shall appear before the appellate Court on 03.02.2020.

**Sd/-
(Rajani Dubey)
JUDGE**