

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.516 of 2019

Nirmal Chand Kothari, S/o Umedchand Kothari, aged about 46 years,
Occupation Business, R/o Kamthi Line, Post, Tahsil and District
Rajnandgaon, Chhattisgarh

---- Appellant

versus

Smt. Afasrun Nisha, W/o Salim Akhtar, aged about (Not Mentioned), R/o
Near Mahadev Mistri, Juni Hatri, Post, Tahsil and District Rajnandgaon,
Chhattisgarh

--- Respondent

For Appellant : Shri S.S. Baghel, Advocate
For Respondent : Shri Sumit Shrivastava, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

12.9.2019

1. With the consent of Learned Counsel appearing for the parties, the appeal is heard finally.
2. The instant appeal has been preferred by the Complainant against the judgment of acquittal dated 12.4.2019 passed by the Judicial Magistrate First Class, Rajnandgaon in Complaint Case No.1922 of 2014, whereby the Judicial Magistrate First Class has acquitted the accused/Respondent of the charge framed under Section 138 of the Negotiable Instruments Act as the case was dismissed for want of prosecution.
3. It appears from the order-sheet of the Trial Court dated 4.2.2019 that on that date examination-in-chief of the Complainant/Appellant was recorded. Thereafter, the case was fixed for 12.2.2019 for submission of grounds of defence which were to be submitted by the accused/Respondent. Thereafter, on 2.3.2019 also, on the request of the accused/Respondent, the case was adjourned for

12.4.2019 for the same purpose. On 12.4.2019, the Trial Court dismissed the complaint case for want of prosecution.

4. In **(2002) 7 SCC 726 (Mohd. Azeem v. A. Venkatesh)**, it has been held by the Supreme Court that in a proceeding under Section 138 of the Negotiable Instruments Act dismissal of the complaint case on a single default in appearance on the part of the Complainant is not proper, legal and justified.
5. In the instant case, dismissal of the complaint case was not the only option before the Trial Court. The Trial Court could have adjourned the case for some other date as per the provision contained in Section 256(1) of the Code of Criminal Procedure. From perusal of the order-sheets of the Trial Court, it is clear that on 12.4.2019, on which the case was dismissed for want of prosecution, the case was fixed for submission of grounds of defence by the accused/Respondent. On that date, personal appearance of the Complainant/Appellant was not essential. Thus, the Trial Court has wrongly dismissed the complaint case.
6. Consequently, the appeal is allowed. The impugned judgment dated 12.4.2019 passed by the Trial Court is set aside. The matter is remanded to the Trial Court. The Trial Court is directed to proceed with the case in accordance with law and decide the issues on merit. The parties are directed to appear before the Trial Court on 25.11.2019.
7. 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