

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Cr.M.P. No. 888 of 2013**

Somaru, S/o Panduram, Aged about 47 years, Caste – Gond, R/o Kumharpara, Shyamaprasad Mukherjee Ward, P.S.- Kowali, Distt. Bastar – (C.G.)

**---- Petitioner/complainant**

**Versus**

1. Rajbati, W/o Lakmu, Aged about 62 years

2. Hemla Sonu, S/o Doga, Aged about 46 years,

Both R/o village Gangaloor Baghepara, P.S. - Gangaloor, Tahsil and District – Bijapur\_(C.G.)

3. Hemla Raju, S/o Bhadru, Aged about 31 years, R/o Near Animal Husbandary Training Center, Kumharpara, P.S. - Kowali Jagdalpur, District – Bastar (C.G.)

4. Smt. Lachhi Bai, W/o Chandan, Aged about 36 years, R/o Kumharpara, P.S. - Kotwali, Jagdalpur

5. Sanjay Pandey Ward Member Aged about 41 years, R/o Kumharpara Shyamaprasad Mukherjee Ward P.S. - Kotwali, Jagdalpur

6. Smt. Seeta Guru Member Mahila Shanti Samiti, Aged about 38 years, R/o Kumharapara, P.S. - Kotwali, Jagdalpur, Distt. Bastar

**---- Respondents/Accused**

For Petitioner : Shri P.R. Patankar, Advocate  
For Respondents : Shri Vinay Pandey, Advocate

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**03/04/2019**

Heard.

(1) The petitioner/complainant filed a complaint against the respondents for the commission of offence under Sections 451, 427 and 506 part I read with Section 34 of the Indian Penal Code on 12.06.2007; and the said complaint was registered on 20.09.2012 and case was fixed for evidence before charge on 23.11.2007. Thereafter,

complainant did not appear before the court on 24.07.2012, the complaint case was dismissed and the case was closed. Petitioner preferred criminal revision thereagainst. The revision was also dismissed by the revisional Court, against which instant petition under Section 482 of the Constitution of India.

(2) Learned counsel appearing for the petitioner/complainant would submit that on 24.07.2012, the petitioner's two witness namely Savitri and Gosmani were present but his counsel fell ill and, therefore, the aforesaid witnesses could not be examined, as such, for the default of counsel, the petitioner/complainant cannot be penalized.

(3) On the other hand, counsel for the respondents/accused would submit that the offence was registered against the respondents on 20.09.2007; and, thereafter the case was fixed for complainant's evidence on 29.05.2012 and finally on 24.07.2012 though the complainant's witnesses namely Savitri and Gosmani were present but the counsel did not examine them intentionally & deliberately to harass the respondents, as such, both the courts below were justified in closing the opportunity for examining the complainant's witnesses and dismissing the complaint case filed by the petitioner/complainant.

(4) I have heard learned counsel appearing for the parties, and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(5) It is true that the offence was registered against the respondents/accused on 20.09.2007 and, thereafter, the case was fixed for evidence before charge on 23.11.2007 and lastly the case is taken-up for complainant's evidence on 24.07.2012 and on that day, the complainant's witnesses namely Savitri and Gosmani were present but as counsel for complainant fell ill, they could not be examined.

(6) It is well settled that for the default on the part of the counsel, party cannot be penalized. If the order impugned is allowed to stand, it causes irreparable loss to the complainant. Though, on relevant date complainant was absent but he kept his two witnesses present but his counsel did not examine them citing health reasons, as such, petitioner cannot be held liable for lapse on the part of his counsel. In view of the aforesaid legal position and the fact that earlier adjournments granted by the trial Magistrate were based on valid and sufficient grounds and, therefore, the trial Court is absolutely unjustified in dismissing the complaint for want of evidence on behalf of the complainant and further the learned Sessions Judge has committed illegality in affirming the order of trial Magistrate.

(7) Accordingly, the order passed by the trial Magistrate is liable to be and is hereby dismissed. Consequently, the impugned order dated 14.08.2013 is also set aside. The matter is restored to the file of Judicial Magistrate, First Class, Jagdalpur for hearing and disposal in accordance with law. The said Court is directed to consider and decide the matter expeditiously preferably within a period of three months from the date of receipt of certified copy of this order. Parties are expected to cooperate with the trial.

(8) The Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-