

**HIGH COURT OF CHHATTISGARH, BILASPUR****Proceedings through Video Conferencing****ACQ.A. No. 165 of 2021**

Sunil Kumar Jain S/o Shri Ram Kumar Jain Aged About 40  
Years Proprietor Amar Enterprizes, R/o Ring Road No- 02,  
Gondwara, Tahsil And District Raipur CG

**----Appellant****Versus**

Lalit Shukla S/o Shri Karuna Shankar Shukla Aged About 31  
Years R/o New Anand Nagar Bhanpuri, Police Station Bhanpuri ,  
District Raipur CG

**----Respondent**

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For Appellant : Shri L.K. Mishra, Adv.  
For Respondent : None appears, though served.  
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**Hon'ble Shri Justice N.K. Chandravanshi**  
**Order on Board**

**25-8-2021**

1. By this appeal, the appellant has challenged the legality and propriety of the impugned order dated 16-10-2019 passed by the Judicial Magistrate First Class, Raipur (CG) in Complaint Case No. 3055/2016 (Sunil Kumar Jain -v- Lalit Shukla), whereby learned trial Court has dismissed the complaint of the complainant for his non-appearance on 16-10-2019.

2. Learned counsel for the appellant submits that appellant filed a Complaint Case bearing registration No. 3055/2016 under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act") against respondent. After registration of the case and appearance of the respondent, on 13-8-2019 examination-in-chief of complainant was recorded and case was fixed for his cross-examination on 14-8-2019, but on that date, and thereafter on 3 consecutive dates, complainant did not appear and his non-appearance was condoned by the Court. Case was fixed on 16-10-2019 for cross-examination of appellant, but due to his illness, he could not appear on that date and application under Section 256 of the Criminal Procedure Code was filed by his counsel mentioning that due to illness, complainant could not appear, therefore, his non-

appearance may be condoned. Another application under Section 143(1) of the Act was also filed by his counsel, but without deciding the application under Section 143(1) of the Act, the case was dismissed by learned trial Court for non-appearance of the complainant. He further submits that there was sufficient reason shown by the complainant for his non-appearance, despite that, learned trial Court dismissed the complaint, therefore, the impugned order is erroneous and illegal.

3. Appellant has filed certified copy of order sheets of the trial Court. A perusal of the order sheets shows that none of the parties was interested in prosecuting the case and for its early disposal. Even the order sheets show that the order sheets have been formally written, on 13-8-2019 when complainant appeared, his examination-in-chief was recorded, thereafter case was fixed for his cross-examination on 14-8-2019, 19-9-2019, 28-9-2019 and 16-10-2019. Before 16-10-2019, on earlier dates, hearing of the case was adjourned because of the time taken on behalf of the complainant due to his non-appearance. On those dates of hearing i.e. 14-8-2019, 19-9-2019 and 28-9-2019, why the complainant did not appear has not been mentioned in the order sheets. The order sheet dated 16-10-2019 shows that on those dates, time was taken on behalf of the complainant mentioning the reason that sometime, he himself was ill, some times his family members were ill. Even, also on 16-10-2019, application was filed on behalf of the complainant mentioning that he was ill, but no medical document was filed in this behalf. Therefore, learned trial Court rejected his application and the case was dismissed for non-appearance of the complainant.

4. Above facts show that appellant/complainant himself is not that much interested to decide his case expeditiously, but this is a case of cheque bounce of Rs. 10,08,235/- and after dismissal of complaint, the appellant/complainant has filed this acquittal appeal. During argument, learned counsel for the appellant prays for one more opportunity for adjudication of the case on merit.

5. It is expected that endeavor of the court should be to decide the case on merit. At the same time, it is also expected from parties to the

proceedings to cooperate with the Court for its adjudication on merit.

6. Considering the totality of above facts, I feel inclined to allow this acquittal appeal by imposing cost upon the appellant/complainant.

7. Accordingly, the impugned order dated 16-10-2019 passed by the Judicial Magistrate First Class, Raipur in Complaint Case No. 3055/2016 (Sunil Kumar Jain -v- Lalit Shukla) is set aside, subject to appellant's paying cost of Rs. 5,000/-, to District Legal Services Authority, Raipur. It is directed that if the appellant files a copy of this order along with receipt of deposit of Rs. 5,000/- in District Legal Services Authority, Raipur, before the Chief Judicial Magistrate, Raipur, the Chief Judicial Magistrate, Raipur shall restore the Complaint Case No. 3055/2016 to its original number and shall proceed with the trial of the case after issuance of formal notice to both the parties of the case for the next date to be fixed in the case.

8. Acquittal appeal allowed.

**Sd/-**  
**(N.K.Chandravanshi)**  
**Judge**