

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****ACQ. APPEAL No. 46 of 2013**

Fegulal Sao, S/o. Shri Ramchandra Sao, aged about 41 years,
R/o. Near Teen Mandir, Behind Ismayl Hotel Manpurain, PS
Tikrapara, Civil and Revenue Distt. Raipur (CG)

----Appellant**Versus**

Firoz Gandhi, aged about 57 years, Son of Shri Iqbal Hussain,
R/o. Behind Dr. Rathi, Shyam Talkies Road, Budhapara, P.C.
City Kotwali, Civil and Revenue District Raipur (CG)

----Respondent

For Appellant : Mr. Sunil Pillai, Adv.
For respondent : Mr. Suresh Tandan, Adv.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****15-7-2021**

1. This acquittal appeal has been filed by the appellant against the order dated 13-5-2013 passed by the Judicial Magistrate First Class, Raipur (CG) in Complaint Case No. 266/2012 (Fegulal Sao -v- Firoz Gandhi) whereby trial Court dismissed the complaint filed by the appellant for his non-appearance on 13-5-2013.

2. Learned counsel for the appellant submits that the appellant filed complaint case bearing registration No. 266/2012 under Section 138 of the Negotiable Instruments Act, 1881 (in short 'Act') against the respondent. After registration of the case and after appearance of the respondent, the case was fixed for charge on 13-5-2013, but since due to medical unfitness of the appellant himself, he could not appear on that date and his advocate also did not appear, therefore, the trial Court dismissed the complaint of the appellant for his non-appearance and acquitted the respondent. He further submits that non-appearance of the appellant was bonafide and not deliberate. Therefore, he prays to allow this acquittal appeal with direction to the trial Court to adjudicate the case on merit.

3. Per contra, learned counsel for the respondent opposes the submissions made by learned counsel for the appellant and submits

that the impugned order passed by the trial Court does not call for any interference.

4. A perusal of the record shows that before the impugned order dated 13-5-2013, the appellant was regularly appearing on each and every date and due to his non-appearance on 13-5-2013 only, the complaint filed by him under Section 138 of the Act has been dismissed by the trial Court.

5. As submitted by the learned counsel for the appellant, due to medical unfitness of the complainant, he could not appear on 13-5-2013. In support of his version, medical certificate issued by the Sahay Clinic and Nursing Home, Raipur has been filed by him wherein it has been mentioned that the appellant was medically unfit from 10-5-2013 to 15-5-2013.

6. Above facts show that there is sufficient and bonafide reason for non-appearance of the appellant on 13-5-2013 before the trial Court and except this date of hearing, his regular appearance on each and every date shows that he was seriously contesting the case. Looking to the above facts and circumstances of the case, I find that this acquittal appeal deserves to be allowed.

7. Accordingly, the impugned order dated 13-5-2013 passed by the Judicial Magistrate First Class, Raipur in Complaint Case No. 266/2012 (Fegulal Sao -v- Firoz Gandhi) is set aside. The complaint is restored and the learned Chief Judicial Magistrate, Raipur is directed to proceed with the trial of the case after issuance of formal notices to both the parties of the next date to be fixed in the case. Learned counsel appearing for both the parties are directed to inform their respective parties to appear before the Chief Judicial Magistrate, Raipur on or before 15th September, 2021 to ascertain the date fixed by learned Chief Judicial Magistrate, Raipur.

8. Appeal allowed.

Sd/-
N.K. Chandravanshi
Judge