

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****ACQ. APPEAL No. 20/2016**

Prasad Trading, (A Proprietary Firm With proprietor), Smt. Shashi Bala W/o Shri Sudhanshu Kumar, Aged About 45 Years, Proprietor Prasad Trading, Bannak Chowk, Sirgitti, P.S. Sirgitti, Bilaspur, District Bilaspur, CG

----Appellant**Versus**

1. C. K. and Co., Proprietor Nithyanandam Manikam 5/65 G Raja Rajan Nagar, Allagapuram, Pudur, P.S. Allagapuram, Salem 636016, Tamil Nadu
2. Mr. Nithyanandam Manikam, Proprietor C.K. and Co. 5/65 G, Raja Rajan Nagar, Allagapuram, Pudur, P.S. Allagapuram, Salem 636016, Tamilnadu

----Respondents

 For Appellant : Shri Sunil Pillai, Adv.
 For Respondents : Shri Mayank Chandrakar, Adv.

Hon'ble Shri Justice N.K. Chandravanshi
Order on Board

5-8-2021

1. By this appeal, the appellant has challenged the legality and propriety of the impugned order dated 5-12-2014 passed by the Judicial Magistrate First Class, Bilaspur (CG) in Complaint Case No. 3811/2014, whereby learned trial Court has dismissed the complaint of the complainant for non-appearance.
2. Learned counsel for the appellant submits that on 5-12-2014, the appellant and his counsel did not appear before the trial Court because inadvertently, his advocate wrongly noted the date as 15-12-2014 instead of 5-12-2014, and therefore, his complaint case was dismissed for non-appearance. He further submits that even the accused has not been noticed and has not appeared in the case. He further submits that the appellant wants that the case be decided on its merit. On further dates,

he will fully cooperate with the Court. Therefore, he requested that the order impugned be set aside and hearing opportunity be granted to the appellant.

3. On the other hand, learned counsel for the respondents opposes the submission made by the counsel for the appellant. He submits that not only on 5-12-2014, but also on other dates, the appellant did not appear in person, therefore, earlier also his case was dismissed for his non-appearance. Therefore, looking to his attitude in prosecuting his complaint case, the order impugned does not call for any interference by this Court.

4. I have heard learned counsel for the parties and perused the impugned order of the trial Court and material available.

5. In this case, neither the appellant nor the respondents have filed complete order sheets of the trial Court, except the impugned order 5-12-2014. Therefore, the argument of learned counsel for the respondents cannot be accepted that earlier also, said complaint case was dismissed for non-appearance of the appellant.

6. As has been stated by learned counsel for the appellant that due to wrong noting of the date of hearing by his advocate, both of them could not appear on 5-12-2014. This shows bona fide of the appellant.

7. 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.

8. In view of above, this acquittal appeal is allowed and the impugned order dated 5-12-2014 is set aside. It is directed that if the appellant

deposits a fine of Rs. 1,000/- (Rs. one thousand) in the District Legal Services Authority, Bilaspur and submits receipt in this regard to the trial Court, then the complaint case No. 3811/2014 (Prasad Trading -v- C.K. & Company and another) be restored in its original file and opportunity of hearing as the case was before 5-12-2014 be provided to the appellant.

9. Learned counsel appearing for both the parties are directed to inform their respective parties to appear before the Judicial Magistrate First Class, Bilaspur on or before 4-10-2021 to ascertain the date fixed by the learned Judicial Magistrate First Class, Bilaspur.

10. Acquittal appeal allowed.

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