

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2134 of 2019**

- Shree Steels Through - Shri Anil Shrivastava, Partner, S/o Late Shri Harishchandra Srivastava, Address - M.G. Road, Dadabadi, Raipur Chhattisgarh. Police Station - Modhapara, District - Raipur Chhattisgarh.

---- Petitioner**Versus**

- M/s Shyam Agro Through Shri Rupendra Verma, Proprietor / Authorized Signatory, S/o Shri Shyamlal Verma, Address - Baloda Bazaar Road, Kharora, Tehsil - Tilda, District - Raipur Chhattisgarh.

---- Respondent

For Petitioner	: Shri Shobhit Mishra, Advocate
For Respondent	: None present.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24/11/2021**

Present petition is filed against the order dated 19.07.2019 passed by the Judicial Magistrate First Class, Raipur in Complaint Case No. 3517/2018 whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instrument Act was dismissed for want of non prosecution and consequently the accused/respondent was acquitted of the charge.

Counsel for the appellant submits that the complaint under Section 138 of the Negotiable Instrument Act was filed in the year 2018 and thereafter the complainant was appearing along with the

Advocate. The case was pending before the Judicial Magistrate First Class, Raipur in which the accused/respondent was ready for settlement of the dispute and in lieu of which the respondent has also paid Rs. 1500/- prior to 19.07.2019. The case was fixed on 15.07.2019 for payment of remaining amount before the Judicial Magistrate First Class Raipur in which the petitioner/complainant was present along with his counsel. Unfortunately, the petitioner's counsel noted the next date of hearing by mistake as 14.08/2019 in his diary and due to which counsel for the petitioner/complainant could not appear before the court below on the said date i.e. 19.07.2019. On 14.08.2019, when the complainant along with the counsel for the petitioner appeared before the concerned court, he came to know that the complaint case had already been dismissed on 19.07.2019 and consequently respondent/accused was acquitted of the charges under Section 138 of the Negotiable Instruments Act. Counsel for the petitioner prays that the complaint case may be restored to its original number and opportunity may be afforded to him to prosecute his complaint so as to facilitate the adjudication of the case on merits.

Counsel for the respondent did not appear though notice has been served.

Heard counsel for the petitioner and perused the material on record.

From perusal of the certified copies of the order sheets it is clear that on 19.07.2019, due to the absence of the petitioner as well as his counsel on the said date fixed for evidence, the trial court by the order impugned has dismissed his complaint case and acquitted the

accused. The Apex Court in the matter of **Mohammed Azeem Vs. A.Venkatesh and Another** reported in **(2002) 7 SCC 726**, has held that dismissal on single default of appearance is a very strict and unjust attitude resulting in failure of justice.

In the present case, order sheets reveal that on different dates the complainant appeared before the trial court and the petitioner has stated that by mistake, the counsel had noted wrong date due to which they did not appear before the trial court.

As has been laid down by the Apex Court in the matter of Mohd. Azeem Vs. A.Venkatesh and another (supra) dismissed of single default of appearance amounts not only to very strict attitude but also unjust resulting in failure of justice. In the facts and circumstances of the case, in my opinion, the learned court below has committed an error in acquitting the accused only for absence of the complainant on one day and accordingly, in view of the law laid down by the Apex Court, the order of dismissal passed by the trial court vide order dated 19.07.2019 is set aside and the complaint case No. 3517/2018 is restored to its original number. The case is remitted back to the trial court to adjudicate the same from the stage of dismissal.

Counsel appearing for the parties are directed to inform the parties to appear before the Court below on 03.01.2022 to ascertain the date to be fixed by the trial Judge for the case.

Sd/-

(Rajani Dubey)
Judge