



2026:CGHC:4253

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ACQA No. 292 of 2018**

Shri Hanuman Sharma S/o Shri Ramgopal Sharma, Aged About 52 Years, R/o Barpali Chowk Champa, Tahsil Champa, District Janjgir-Champa, Chhattisgarh,

...Appellant**versus**

P.K. Dalal and Company Through Proprietor Pawan Kumar Soni, Aged About 50 Years, R/o Sanjay Nagar, Champa Tahsil Champa, District Janjgir-Champa, Chhattisgarh,

... Respondent

For Appellant : Shri Aditya Dhar Diwan, appears on behalf of Shri Prasoon Agrawal, Advocate

For Respondent : Shri Shobhit Koshta, Advocate

Hon'ble Shri Justice Radhakishan Agrawal**Order on Board****23/01/2026**

1. This is an acquittal appeal filed under Section 378(4) of the Cr.P.C. by the complainant/appellant against the order dated 28.06.2018 passed by the Judicial Magistrate First Class, Champa, District – Janjgir-Champa (C.G.), in Complaint Case No.1440/2008 which has been dismissed under Sections 256(1) of Cr.P.C. as the complainant was not present on the date of hearing, and consequently, the respondent/accused was discharged of the charge under Section 138 of the Negotiable Instruments Act, 1881 by the said Court.

2. The brief facts of the case are that the complainant/appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent/accused. It is alleged that the accused had availed the services of repair and servicing of his car from the complainant's workshop. Towards discharge of the said liability, the accused issued two cheques bearing Nos. 063473 of Rs.30,000/- and 063474 of Rs.20,000/- dated 08.04.2008 and 10.05.2008 respectively. Upon presentation, both cheques were dishonoured by the bank on account of insufficiency of funds. Consequently, the complainant initiated proceedings against the accused under Section 138 of the Negotiable Instruments Act, 1881. The said allegations were, however, denied by the accused/respondent.
3. Learned trial Court after taking statement of the complainant registered the complaint case under Section 138 of the Negotiable Instruments Act. The ordersheets of Trial Court would show that after completion of the complainant's evidence, the case was fixed for defence evidence on 19.06.2018 and 28.06.2018 but on the said dates, complainant as well as his counsel did not appear before the learned trial Court. Therefore, the learned trial Court dismissed the complaint case for want of prosecution and discharged the respondent from the charge under Section 138 of the Negotiable Instruments Act. Hence this appeal filed by the appellant.
4. Learned counsel for the appellant/complainant submits that the learned trial court, while passing the impugned order, failed to appreciate that this was the first occasion on which the appellant could not appear either personally or through his counsel. In such circumstances, the adoption of a rigid and technical approach was wholly unwarranted,

and the complaint ought not to have been dismissed at the very first instance of non-appearance. He further submits that when the case was listed before the Trial Court for cross-examination of the defence witnesses the complainant could not appear however, due to bona fide mistake occurred on behalf of the complainant's counsel, complainant could not appear before the learned trial Court. On the aforesaid grounds, it is submitted that the impugned order deserves to be set aside and the complaint be restored for adjudication on merits.

5. Learned counsel for the respondent supported the impugned order.

6. In the matter of **Associated Cement Co. Ltd. Vs. Keshvanand**

reported in **(1998) 1 SCC 687**, Hon'ble the Apex Court held as under:-

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint

may not be a proper exercise of the power envisaged in the section. The discretion must, therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice."

7. Again, in the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, Hon'ble the Apex Court held that in a proceeding under the Act, 1881, due to single default in appearance on the part of the complainant/appellant, the dismissal of the complaint case is not proper, legal and justified.
8. Perusal of the ordersheets of the trial Court dated 19.06.2018 would show that on the said date the case was fixed for defence evidence, but the complainant and his counsel were not present before the trial Court. On the same day when complainant's counsel was called, then his junior counsel appeared and informed that the arguing counsel was engaged in Family Court, Janjgir and would be able to appear after some time but the arguing counsel did not appear, as such, the case was adjourned and fixed for defence evidence on 28.06.2018. Again on 28.06.2018 when the case was called, although defence witness Suresh Soni was present before the Court, but neither complainant nor his counsel appeared before the Court for the cross-examination of the defence witness. Thus, the learned Trial Court dismissed the case of the complainant for non-prosecution under Section 256(1) of Cr.P.C. Consequently, the accused was discharged from the allegation levelled against him.
9. It is pertinent to mention here that dismissal of the complaint case was not the only option before the trial Court. The trial Court could have

adjourned the case to some other date as per the provisions of Section 256(1) CrPC. From perusal of the order-sheets of the trial Court, it is seen that on the earlier dates of hearing the complainant was present in person or through his counsel. As such, it cannot be said that the complainant was not interested in pursuing his case and unnecessarily remained absent on 19.06.2018 and 28.06.2018 to hamper the course of justice.

10. The trial Court vide order dated 19.08.2008, having perused the statement of the complainant and the documents produced by him found *prima facie* case under Section 138 of the Negotiable Instruments Act being made out against the respondent/accused. Further, the complainant is contesting his case since 2008. Thus, in the given set of facts and circumstances of the case and the conduct of the complainant, keeping in view the aforesaid decision of Hon'ble Supreme Court, the order impugned dismissing the complaint case for want of prosecution is not sustainable in law and is liable to be set aside.
11. Accordingly, the appeal is allowed and the order dated 28.06.2018 passed by learned trial Court is hereby set aside. The trial Court is directed to proceed with the case and after providing opportunity to the parties, the case shall be decided on merits in accordance with law.
12. Both the parties are directed to appear before the trial Court on **26th February, 2026** for further proceedings.
13. The appeal thus stands allowed to the above extent. Records be sent back to the concerned Trial Court.

Sd/-

**(Radhakishan Agrawal)
Judge**