

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Acquittal Appeal No. 55 of 2016**

Rajkumar Dhanwani (Since Deceased) S/o Late Shri Gulab Chand Dhanwani through his Legal Heirs :

**1(a).** Smt. Jyoti Dhanwai W/o Late Shri Rajkumar Dhanwani, aged about 46 years,

**1(b).** Lavneesh Dhanwani, S/o Late Shri Rajkumar Dhanwani, aged about 22 years,

**1(c).** Ku. Reema Dhanwani, D/o Late Shri Rajkumar Dhanwani, aged 24 years,

All are resident of 'Colours', Sant Kanwar Ram Chowk, Katora Tala, P.S. Civil Lines, Raipur, Distt. Raipur, Chhattisgarh.

**---- Appellants**

**Versus**

1. Ashok Traders, Proprietorship Firm through Proprietor Shri Ashok Kumar Chhangani, Address: B-22, Rishabh Complex, M.G. Road, Raipur, Distt. Raipur, Chhattisgarh.
2. Shri Ashok Kumar Chhangani S/o Shri Narayan Das Chhangani, aged about 52 years, Proprietor Ashok Traders, Address - Matra Chhaya, in front of Shobha Agency, Ambedkar Chowk, Raja Talab, Raipur, Distt. Raipur, Chhattisgarh.

**---- Respondents**

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| For Appellants      | : | Shri Kashif Shakeel, Advocate |
| For Respondent no.2 | : | Shri Sunil Otvani, Advocate   |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**29.07.2016**

Heard on I.A. No. 02/2016, application under Rule 125 of the High Court of Chhattisgarh Rules, 2007.

**2.** In the facts and circumstances of the case, I.A. No.02 is allowed to the extent of the appellants to pursue the present acquittal appeal as the legal heirs of the original complainant Rajkumar Dhanwani.

**3.** The present appeal has been filed seeking for quashment of the order

dated 10.07.2015 passed by the JMFC, Raipur in Criminal Complaint Case No. 361/15 which got dismissed for want of prosecution.

4. Counsel for the appellants submits that the original complainant Rajkumar Dhanwani had filed a complaint before the Court below under the provisions of Section 138 of Negotiable Instrument Act on 10.07.2013 and it was proceeded further even to the stage where the evidence of the complainant was recorded. Meanwhile, the original complainant Rajkumar on 08.06.2014 had expired and his legal heirs i.e. the present appellants moved an application on 25.07.2014 for bringing the legal heirs on record which was pending for consideration before the trial Court. However, on 10.07.2015 on account of default in appearance on the part of the legal heirs of the original complainant or their advocate, the matter was dismissed for want of prosecution leading to the filing of this appeal.

5. Taking into consideration the peculiar facts and circumstances of the case and also the fact that the original complainant has been prudently contesting his case since beginning to the extent of the stage the complainant himself was examined and the fact that the legal heirs had also promptly moved the application for bringing them on record which was pending before the Court below for consideration, in the opinion of this Court, it would be proper if the legal heirs of the original complainant i.e. the present appellants are permitted to contest the case further and their right should not be construed adversely.

6. The Supreme Court in the case of Associated Cement Co. Ltd. v. Keshvanand reported in (1998) 1 SCC 687 in paragraph 18 has 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 the 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. The Supreme Court again in the case of Mohd. Azeem v. A. Venkatesh and Another reported in (2002) 7 SCC 726 has very categorically held that in a proceeding under Section 138 of the Negotiable Instruments Act, the one singular default in appearance on the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.

8. Taking into consideration the law laid down by the Supreme Court in the above referred two judgments, this Court is of the opinion that ends of justice would meet if the order dated 10.07.2015 dismissing the complaint for want of prosecution is set aside and the matter is remitted back to the Court below for further proceedings with the case from the stage it stood on 10.07.2015. It is accordingly ordered.

9. It is directed that both the parties shall remain present before the Court below on 6th of September, 2016 and the Court below in turn shall proceed further with the case as expeditiously as possible.

**Sd/-**

**P. Sam Koshy**

Judge