
(2013) 12 CHH CK 0007
In the Chhattisgarh High Court
Case No : Criminal Misc. Petition No. 1039 of 2013

Martin

APPELLANT

Vs

Khileshwar Prasad

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 CGLJ 596 : (2014) CriLJ 1414 : (2014) 1 Crimes 695 :
(2014) 1 MPHT 61 : (2014) 3 RCR(Criminal) 146

Hon'ble Judges : T.P. Sharma, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—By this petition u/s 482 of Cr.P.C., the petitioner has prayed for quashment of the order dated 1-6-2013 passed by the Judicial Magistrate 1st Class, Bilaspur in Complaint Case No. 13/2013 whereby after appearance of the accused the Court below has dismissed the complaint for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (summon trial case) u/s 256 of Cr.P.C. in absence of the complainant/applicant herein. I have heard learned Counsel for the applicant and perused the order impugned and the petition.

2. Learned Counsel for the applicant submits that the Court below ought not to have dismissed the complaint in absence of the complainant and by dismissing the complaint instead of adjourning the same, the Trial Court has committed illegality. Reliance placed in the matter of Smt. R. Rajeshwari Vs. H.N. Jagadish and another, , in which the High Court of Karnataka has held that the complaint dismissed for want of prosecution may be restored in exercise of inherent jurisdiction u/s 482 of Cr.P.C..

3. As per Section 256 of Cr.P.C., in summon trials, on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, if the complainant does not appear, then the Magistrate shall

acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

4. Section 256 of Cr.P.C. reads thus:--

256. Non-appearance or death of complainant.--

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases, where the non-appearance of the complainant is due to his death.

5. Effect of dismissal of any summon trial in terms of Section 256 of Cr.P.C. would be of acquittal. In the matter of Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another, , the Supreme Court while dealing with the question of restoration of dismissed complaint and acquittal of the accused on the ground of non-appearance of the complainant has held that "the Magistrate has no jurisdiction to restore or revive the dismissed complaint on a subsequent application of the complainant. The Code does not permit a Magistrate to exercise an inherent jurisdiction which he otherwise does not have".

6. In the light of effect of dismissal of complaint in summon trial cases the remedy to file leave to appeal and appeal u/s 378(4) of Cr.P.C. is available to the complainant. This is not the case, where the applicant is remediless.

7. In these circumstances, in the light of dictum of the Supreme Court in Maj. Genl. A.S. Gauraya (supra), and availability of remedy under the law, I am unable to accept the view taken by the High Court of Karnataka in Smt. R. Rajeshwari (supra).

8. Consequently, the petition is liable to be dismissed and is hereby dismissed reserving aforesaid liberty to challenge the order of dismissal in appeal u/s 378(4) of Cr.P.C. Certified copy as per rules.