

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 762 of 2015**

Arun Kumar Kurre S/o Jeewan Lal Aged About 31 Years R/o Village -
Chilhati, Police - Station Sarkanda, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

Bhawani Shankar S/o Neelkanth Tiwari Aged About 40 Years R/o Bhawani
Beema Kendra Ambedkar Ward Near Water Tank - Pandariya Road
Mungeli, Police Station - Mungeli, District Bilaspur Chhattisgarh

---- Respondent

For Petitioner : Mr. Ravi Maheshwari, Advocate.

Order On Board**28/03/2016**

Notice issued to respondent not received served or unserved.

2. Learned counsel for the petitioner submits that as the respondents was not noticed before the trial Court and also not represented before the revisional court, and the trial Court dismissed the complaint under the provisions of Section 204 sub-section (4) of the Cr.P.C., the matter may be heard finally at motion stage even without noticing the respondent and the applicant may be given one opportunity to file process fee for issuance of notice to respondent.
3. On due consideration, the matter is heard finally without noticing to the respondent.
4. Facts necessary for disposal of the case are that before Judicial Magistrate First Class, Bilaspur a criminal compliant case No. 136/2013 (Arun Kumar Kurre -v- Bhawani Shankar) under Section 138 of the Negotiable Instruments Act, 1881 was pending in which the court below taken cognizance, registered criminal complaint case and directed for issuance of summons to respondent but as the applicant failed to pay process fee as required under Section 204 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') dismissed the complaint vide order dated 20-11-2014. Against said order the applicant preferred criminal revision No. 39 of 2015 before the Additional Sessions Judge, Bilaspur. Learned revisional court vide order dated 14-8-2015 dismissed the said revision as not maintainable. Against said order, the applicant has preferred instant CRMP under Section 482 of the Cr.P.C. praying for the relief that the impugned order dated 20-11-2014 be quashed and the applicant be granted an opportunity to pay PF in the matter for issuance of notice to the respondent and for proper adjudication of the matter on merit.
5. Learned counsel for the applicant submits that the applicant has come to this court with folded hands on mercy ground. Though he committed many mistake

by not appearing before the court below and also by not paying PF as required but to prove his case on merit, he be given an opportunity to pay PF for issuance of notice and let the matter be disposed of on its merit looking to the fact that the respondent committed breach for Section 138 of the Negotiable Instruments Act and thereby the applicant suffered financial loss as the cheque issued by the respondent was not honoured.

6. From perusal of the entire CRMP, the impugned order dated 20-11-2014 and the order passed by the revisional court dated 14-8-2015, it appears that the plaintiff was gross negligent for his appearance before the trial Court and also he was not represented through his counsel before the trial Court for many occasions. Despite that, the trial Court registered the said complaint case. The applicant has not taken care to pay PF. Despite negligence before the trial Court, since the applicant has come to this court with folded hands and submitted that only on mercy ground one opportunity may be granted to him to pay PF so that the matter may be heard on merit, I am inclined to grant opportunity to the applicant.

7. Consequently, the instant CRMP is disposed of. The applicant is directed to remain present before the trial Court i.e. Judicial Magistrate First Class, Bilaspur having jurisdiction to try the said criminal complaint case either in person or through his counsel on 29-4-2016. He is further directed to deposit PF on 29-4-2016 as required by the trial Court. If process fee along with Talwana as required and the copy of the complaint are filed before the trial Court on 29-4-2016, then only the trial Court is directed to issue notice as per order and then only the order dated 20-11-2014 be deemed quashed. If the applicant fails to pay PF on 29-4-2016 and also does not appear either in person or through his counsel on the said date, then no other opportunity be granted to him and the order dated 20-11-2014 shall remain in force. If the process fee is paid as required as per earlier order by the trial Court and the applicant appear before the trial Court either in person or through counsel then only the trial Court is directed to proceed further for hearing of said complaint case as directed under the law. The petition is accordingly disposed of.

8. The applicant may file a copy of this order before the trial Court for compliance. Registrar Judicial is also directed to send a copy of this order to the trial Court through fax and usual mode immediately.

Sd/-
(Chandra Bhushan Bajpai)
Judge