

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1641 of 2017**

- Mukeshkant Sahu, S/o. Late Shri Ramsewak Sahu, aged about 50 years, R/o. Ward No.19, Baronda Chowk, Near Gayatri Temple, Mahasamund, PO Police Station & Tahsil Mahasamund, Distt. Mahasamund (CG)

---- Petitioner

Versus

Pramod Kapse, S/o. Late Namdeo Kapse, aged about 49 years,
R/o. Kapse Tower, Tatyapara Chowk, Raipur Distt. Riapur (CG)

---- Respondent

For the petitioner : Ms. Rashul Bhawnani, Advocate
For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****09.10.2018.**

1. Heard on IA No.01/17 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and the delay of 29 days in filing the petition is hereby condoned.
3. Also heard on application for leave to appeal under Section 378(4) of CrPC.
4. On due consideration, leave to appeal is granted.
5. This appeal has been preferred against Order dated 31.7.2017 passed by Chief Judicial Magistrate, Mahasamund (CG) in Criminal Complaint Case No.460/2014 under Section 138 of the Negotiable Instruments Act, 1881 wherein the said Court dismissed the complaint for want of prosecution.

6. Complaint case was filed on 01.12.2012 and it was registered on 04.01.2013. On various days summons were issued to the respondent and on 23.02.2013 summon was served to him, but he remained absent. Thereafter, bailable warrant was issued since 18.10.2013 up to 31.7.2017. From the record of the trial Court, it is not clear whether the process fee was paid for issuance of bailable warrant and whether the bailable warrant was issued after payment of PF or not. It is also not clear whether warrant issued by this Court is served or not or its report is awaited.

7. As the respondent is yet to appear before the trial Court, he is not required to appear in the present appeal. The only person who is appearing before the trial Court is the complainant either himself or represented through counsel. The trial Court has not ascertained whether any bailable warrant really been issued since 18.10.2013 for appearance of the respondent.

8. On 31.7.17, the case was fixed for appearance of the respondent, but the trial Court insisted upon presence of the complainant. Dismissal of the complaint was not the only option before the trial Court. As per Section 256(1) of CrPC the Court can adjourn the case for some other date. Every case should be dealt with such a manner to adjudicate the issues between the parties and therefore, efforts ought to have been made for presence of the respondent and hearing of both the sides, but the same is not done in the present case. Looking to the factual matrix of the case, the order passed by the trial Court is not

sustainable and the same deserves to be set aside and the trial Court be directed to adjudicate the matter after following the due procedures.

9. Accordingly, the petition is allowed and the order dated 31.7.2017 passed by the trial Court is hereby set aside. Now the case is remanded back to the trial Court for adjudicating the matter afresh.

10. The appellant shall appear before the trial Court on 29.11.2018 for further proceedings.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**