

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 900 of 2018**

- Mukesh Kumar Rajak S/o Late Shri Gend Lal Rajak Aged About 29 Years R/o Rajendra Nagar, Chatapara, Police Station Civil Lines, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

- Smt. Shilpa Kaushik Wd/o Late Harish Kaushik Aged About 30 Years D/o Rambilash Kaushik, R/o Raipur Road, Parsada, Tahsil Bilha, Police Station Chakarbhatta, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Mahendra Dubey, Advocate
For Respondent	:	Shri Ravindra Sharma, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

29/10/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 293 days in filing the petition is hereby condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (4) of the Cr.P.C.
4. On due consideration, leave is granted.
5. This petition is preferred against the order dated 3.4.2017 passed by the Judicial Magistrate First Class, Bilaspur(CG) in Complaint Case

No.2388/2016, whereby the complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.

6. Learned counsel for the petitioner submits that the trial Court has wrongly dismissed the case of the petitioner without affording opportunity of adduce evidence.

7. On the other hand, learned counsel for the respondent vehemently opposed the contention of the counsel for the petitioner and submits that the petitioner was granted proper opportunity but the petitioner failed to adducing evidence.

8. As per order sheet of the trial Court, the case was registered on 14.3.2016 and the matter was fixed for stating the particulars of the offence to respondent on 3.4.2017. For stating particulars of the respondent, presence of the petitioner/complainant was not required, but the trial Court dismissed the complaint for want of prosecution.

9. Dismissal of complaint in absence of the complainant was not the only option before the trial Court. As per Section 256 Cr.P.C., Court can adjourn the case for some other day. Every case should be heard on merits and it should not be sent to Record Room without deciding the issues between the parties. When the matter was at initial stage of stating particulars of the offence, there is no justification for dismissing the complaint. Therefore, the order passed by the trial Court is not sustainable and the same deserves to be set-aside.

10. Accordingly, the petition is allowed and the order dated 3.4.2017

passed by the Judicial Magistrate First Class, Bilaspur (CG) in Complaint Case No. 2388/2016 is hereby set-aside. The matter is remanded back to the trial Court for adjudicating the case afresh in accordance with law by providing opportunity of adducing evidence to both the parties.

11. Both the parties shall appear before the trial Court for further proceedings on 11th December, 2018.

Sd/-

(Ram Prasanna Sharma)

Judge