

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1160 of 2018**

Deep Kumar Sahu, S/o Kawaldhar Prasad Sahu, Aged About 32 Years,
R/o- Infront of Tahsil Office Dabhra, Tehsil- Dabhra, District- Janjgir-
Champa (C.G.) **---- Petitioner**

Versus

1. Chitrakumar Chandra @ Dau, S/o Shyamsundar Chandra @
Sohan Chandra, Aged About 27 Years, R/o- Kotekonechote, P.S.
& Tehsil- Dabhra, District- Janjgir-Champa (C.G.)
2. State of Chhattisgarh Through- District Magistrate Dabhra,
District- Janjgir-Champa (C.G.) **---- Respondents**

For Petitioner : Mr. Surfaraj Khan, Advocate.
For Respondent No.1 : Mr. Vipin Tiwari, Advocate.
For State : Mr. Ramakant Pandey, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

24/09/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay
in filing the petition.
2. For the reasons mentioned in the application, the same is
allowed and delay of 501 days in filing the petition is condoned.
3. Also heard on application filed under Section 378(4) of the Code
of Criminal Procedure, 1973 for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This petition is preferred under Section 378 (4) of the Code of
Criminal Procedure, 1973 against order dated 03.11.2016
passed by learned Judicial Magistrate First Class, Dabhra,
District- Janjgir-Champa (C.G.) in Criminal Case No. 166/2011,
wherein, the said court dismissed the complaint filed under
section 138 of the Negotiable Instrument Act, 1881 for want of
prosecution.

6. It appears that the trial court recorded entire evidence of the complainant and after recording evidence of complainant, case was fixed for defence witnesses vide order dated 17.06.2016, 14.09.2016 and 14.10.2016. On 03.11.2016, the case was fixed for further orders and on future dates either witness of defence side was to be examined or the case should be closed from defence side. There was nothing remained for complainant side to prosecute the case. It was the defence side who has to choose whether the witnesses to be examined or not and thereafter only pronouncement of judgment was left for the trial court.
7. The trial court dismissed the complaint in absence of complainant. Dismissal of complaint was not only option for the trial court under Section 256 of Cr.P.C. The trial court has another option to adjourn the case for some future date that is not done. Procedure adopted by the trial court after recording entire evidence of complainant is not proper and the same is not sustainable.
8. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to proceed with the case according to law from the stage of examination of defence witnesses.
9. It is directed that the parties shall appear before the trial court on 30th October, 2018 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge