

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1397 of 2018**

Vineet Bhattar, S/o Shri Naresh Bhattar, Aged About 32 Years, Pro.
Shivani Finance Off./o Shop No. 2, Kishan Mill Complex, Lavan
Road, Ambedkar Chawk, Bhatapara, Tahsil & District- Baloda Bazar
(C.G.) **---- Petitioner**

Versus

Asha Yadav, W/o Sanjay Yadav, R/o House No. 75, Vill. & Tah.
Sarangarh, Police Station Sarangarh, District Raigarh (C.G.). PIN
496445. **---- Respondent**

For Petitioner : Mr. Akash Pandey, Advocate.
For Respondent : None.

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 552 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 25.10.2016 passed by learned Chief Judicial Magistrate, Baloda-Bazar (C.G.) in Criminal Case No. 1267/2015, wherein, the said court dismissed the complaint for want of prosecution.
6. In the present case, complaint was filed under section 138 of the Negotiable Instrument Act, 1881 and it was registered vide order dated 28.11.2015. Summon was served for appearance of respondent on 04.01.2016, but he had not appeared and thereafter bailable warrant was issued against him. Again, bailable warrant was returned served and on 23.05.2016

order was passed to issue non-bailable warrant against the respondent.

7. From the order-sheet, it is not clear that whether non-bailable warrant was issued by the trial court or not and whether it was served or not or its report was awaited. When appellant has paid process fee for issuing summon to the respondent, it was for the trial court to ascertain compliance of its order regarding non-bailable warrant, but from order-sheet it is not clear whether warrant is served or not.
8. On 25.10.2016, the trial court dismissed the complaint for non-appearance of the appellant. Dismissal of the complaint was not the only option available to the trial court. When respondent had yet to appear before the trial court, the case could be adjourned for any future date, but that is not done. From entire order-sheet, it appears that the case is at initial stage where respondent has not appeared therefore, efforts should be made for appearance of respondent and thereafter case should be decided on merit. In view of the above, the order passed by the trial court is not sustainable.
9. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to proceed for appearance of respondent and after his appearance, the case should be heard on merit.
10. The appellant is directed to appear before the trial court on 30th October, 2018 and the trial court shall proceed further.
11. Record of the trial court be sent immediately.

Sd/-
(Ram Prasanna Sharma)
Judge