

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Misc. Petition No.1726 of 2018

- Arvind Agrawal S/o Late Radheshyam Agrawal Aged About 60 Years R/o Seth Basantlal Marg, Ambikapur, P. S. And Tahsil Ambikapur, District Surguja Chhattisgarh

---- Petitioner

Versus

- Kamlesh Singh Parmar S/o Ramadhar Singh Parmar Aged About 45 Years R/o Wadrafnagar, Near Petrol Pump, District Balrampur-Ramanujganj Chhattisgarh

---- Respondent

 For the Petitioner : Shri CJK Rao, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

24.8.2018.

1. Heard on IA No.01/18 for condonation of delay in filing the petition supported with an affidavit.
2. For the reasons mentioned in the application, the same is allowed and the delay of 10 days in filing the petition is hereby condoned.
3. As the respondent is yet to appear before the trial Court and as the proceedings were terminated before the trial Court without hearing, leave to appeal is granted.
4. Also heard on admission.
5. Admit.
6. This is an acquittal appeal filed under Section 378(4) of CrPC, 1972 against order dated 28.5.2018 passed by Judicial Magistrate First Class, Ambikapur, Distt. Surguja in Complaint Case No.1066/2015 wherein the said Court dismissed the complaint filed by the appellant for commission of offence under Section 138 of Negotiable Instruments

Act, 1881 for want of prosecution. The complaint was filed for the offence as aforementioned and it was registered as Criminal Complaint Case No.1066/2015 and fixed for hearing on 28.5.2016.

7. Learned counsel for the appellant submits that dismissal of the complaint case is unjust and the trial Court ought to have dispensed with the attendance of the appellant. He further submits that the complainant is having a good case on merits and therefore, the case be considered on its merits.

8. In the present case, respondent is not appearing before the trial Court as summon is not served on him. The case was pending at preliminary stage for appearance of the other side and it was not fixed for hearing. Therefore, dismissal of the complaint case at the beginning stage appears to be unjust.

9. Taking into consideration of the overall facts and circumstances of the case, order dated 28.5.2018 passed by Judicial Magistrate First Class, Ambikapur is set aside. The case is remanded back to the trial Court for adjudicating the matter after providing opportunity to hearing to both the parties.

10. It is directed that the appellant shall appear before the said Court on 04.10.2018 and the trial Court shall proceed further.

11. In view of the above, the appeal stands disposed of.

Sd/-
(Ram Prasanna Sharma)
JUDGE