

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1810 of 2018**

- M/s Ajay Traders Through- Shri Ajay Agrawal, S/o Late Shri Shambhulal Agrawal, R/o- Police Station- Civil Lines, Shailendra Nagar, Tahsil And District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. M/s K.M. Peer Enterprises Through- Its Proprietor- Shri Mohd. Anwar, Address At K.M. Peer Saheb Street, Kankapura, District- Ramanagaram, Karnataka, 562 117.
2. Shri Mohd. Anwar Proprietor, M/s K.M. Peer Enterprises, Address At K.M. Peer Saheb Street, Kankapura, District- Ramanagaram, Karnataka., 562 117.

---- Respondents

 For the petitioner : Shri Sharad Mishra, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****30.10.2018.**

1. Heard on IA No.01/18 for condonation of delay in filing the petitioner.
2. On due consideration, the application is allowed and the delay of 196 days in filing the petitioner is hereby condoned.
3. Also heard on application for leave to appeal under Section 378(4) of CrPC.
4. This appeal has been preferred against Order dated 27.11.2017 passed by Judicial Magistrate First Class, Raipur (CG) in Criminal Compliant No.121/20116 under Section 138 of the Negotiable Instruments Act, 1881 wherein the said Court dismissed the complaint for want of prosecution.
5. It appears from the order sheet of the Court of Judicial Magistrate First Class that summon was issued to the respondent

for his appearance but that was not served. The matter was posted for his appearance but the Court below dismissed the complaint for non appearance of the complainant.

6. Dismissal of the complaint was not the only option before the trial Court, it could have adjourn the case for some other date. In view of this Court, the case should be decided on merits and should not be sent to the record room without adjudicating the issues between the parties. As the matter was fixed for appearance of the respondent, dismissal of the complaint for non appearance of the petitioner who was the complainant in the said case is not proper. Order passed by the trial Court is not sustainable and the same deserves to be set aside.

7. Accordingly, the petition is allowed and the order dated 27.11.2017 passed by the trial Court is hereby set aside. Now the case is remanded back to the trial Court for adjudicating the matter afresh. The trial Court is directed to proceed with the case after appearance of the respondent.

8. The petitioner shall appear before the trial Court on 03.01.2019 for further proceedings.

SD/-
(Ram Prasanna Sharma)
JUDGE