

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1784 of 2018**

M/s Sewa Traders, Through Its Proprietor Shri Mahesh Pungalia, Aged About 62 Years, S/o Shri J. P. Pungalia, R/o Osho Bhawan, Mini Mata Chowk, Gudhiyari, Raipur Tehsil & District- Raipur (C.G.)

---- **Petitioner**

Versus

Pradeep Kumar Jain (Badjatyaa), R/o Flat No. 502, Wing No. 18, Ashoka Ratan, Khamardih, Raipur, Tehsil & District- Raipur (C.G.)

---- **Respondent**

For Petitioner : Mr. Sharad Mishra, Advocate.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

25/10/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Mahesh Pungalia.
2. For the reasons mentioned in the application, the same is allowed and delay of 402 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 22.03.2017 passed by Judicial Magistrate First Class, Raipur (C.G.) in Complaint Case No. 620/2016, whereby the said court dismissed the complaint filed under Section 138 of the Negotiable Instrument Act, 1881 for want of prosecution.

6. It appears that bailable warrant was issued to respondent by the trial court and case was fixed for presence of the respondent who was not present on 22.03.2017. From record, it is not clear whether bailable warrant was served or it's report is awaited. The trial court has not mentioned in its order-sheet regarding service of bailable warrant. When the case was fixed for appearance of the respondent, dismissal of complaint was not warranted. 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. Therefore, order passed by the trial court is not sustainable. The trial court should make effort for serving the bailable warrant to the respondent, thereafter the matter would have been heard on merit, but that is not done and record was sent to record room without deciding the matter for which complaint was filed.
7. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to proceed with the case in accordance with law. If required, bailable warrant be again issued to the respondent as per rules.
8. The petitioner shall appear before the trial court on 13th December, 2018 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge