

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1969 of 2018**

- Tarun Kumar Dwivedi S/o S. K. Dwivedi Aged About 34 Years R/o Namnakala, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

- Naveen Gupta S/o Jagdish Gupta Aged About 34 Years R/o Namnakala, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Respondent

 For the Appellant : Mr. Rahul Mishra, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

20-09-2018.

1. Heard on I.A.No.1 of 2018, which is an application for condonation of delay in filing the instant CRMP.
2. For the reasons stated in the application, the same is allowed and delay of 72 days in filing the instant CRMP is hereby condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(4) of Cr.P.C., 1973. After due consideration, the same is allowed.
4. This appeal is directed against the order dated 26-4-2018 passed by the Judicial Magistrate First Class, Ambikapur in Complaint case No. 1001/2011 filed under Section 138 of the

Negotiable Instruments Act, 1881 where the said court dismissed the complaint for want of prosecution.

5. It appears that the case was fixed to state particular offence to the respondent on 26-4-2018 for which the attendance of respondent was required and attendance of complainant was not compulsory. When the case was fixed for particular offence to be stated to respondent, dismissal of complaint on non-appearance of the complainant was not only option before the trial Court. The trial Court ought to have proceeded after recording plea of the respondent for hearing of the case, but that is not done and proceeding was terminated without hearing the parties and the same is not fitness of procedure. The order dated 26-4-2018 passed by the trial Court is not sustainable.
6. Accordingly, the petition is allowed and the order dated 26-4-2018 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 recording plea of the respondent.
7. The appellant shall appear before the trial court on 30-10-2018 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju