

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1959 of 2018**

- Amit Goyal S/o Shri Jagmahendra Goyal Aged About 40 Years Occupation Business, R/o Kharsiya Road Ambikapur, Tahsil Ambikapur, District Surguja, Civil And Revenue District - Surguja, Chhattisgarh. (Complainant), District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner**Versus**

1. Atikul Hasan S/o Mohammad Shamim Aged About 38 Years R/o Pro. Hind Motor, In Front Of Arju Hotel, Ring Road, Kharsiya Naka, Ambikapur, Tahsil Ambikapur, District - Surguja, Chhattisgarh. (Accused), District : Surguja (Ambikapur), Chhattisgarh
2. The District Magistrate Ambikapur, District - Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Petitioner	:	Shri M.K. Sinha, Advocate
For State/ Respondent 2	:	Ms. K. Tripti, Rao, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

20/9/2018

1. Heard on the application for condonation of delay in filing the present petition.
2. For the reasons mentioned in the application, same is allowed and delay of 8 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (4) Cr.P.C.

4. On due consideration, the application is allowed.

5. The instant Cr.M.P. has been filed against the order dated 23.6.2018 passed by the Judicial Magistrate First Class, Ambikapur, District Sarguja (CG) in Cr. Case No. 579/2017 under Section 138 of the Negotiable Instruments Act, 1881, wherein the said Court has dismissed the complaint for want of prosecution.

6. As the respondent yet to appear before the trial Court, his representation before this Court is not required. From the order of the trial Court it is not clear as to how many times, the process fee was paid for issuance of summons to the respondent. It is also not clear as to whether any summon was issued by the trial Court and whether it was served or unserved. It is not clear whether service report is awaited or not. The trial Court has dismissed the complaint for want of prosecution, but that was not the only option available to the trial Court. As per Section 256 (1) of the Cr.P.C. even in absence of complainant or his counsel, the case can be adjourned for any future date.

7. In view of this Court, all the cases should be decided on merits and no case should be sent to record room without hearing the parties. Looking to the lacuna in the order as mentioned above, the order passed by the trial Court is not sustainable and the same is hereby set-aside. The trial Court is directed to provide an opportunity to the petitioner to pay the process fee and then issue summon to the respondent and thereafter, case shall be decided on merits. The petitioner is directed to appear before the trial Court

on 30th October, 2018 for further proceedings.

8. The Cr.M.P. stands disposed of.

Sd/
(Ram Prasanna Sharma)
Judge