HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1953 of 2018

Pradeep Kumar Jain, S/o Late Komalchand Jain, Aged About 45 Years, Proprietor -Ishita Construction, Nootan Chowk, House No. F-4/2, Friends Residency, Sarkanda, Bilaspur, Tahsil & District – Bilaspur (C.G.)

---- Petitioner

Versus

Rajeev Goutam, S/o Ravishankar Goutam, R/o Village & Post Chorgadhi, Police Station - Gortala, Rampur, Naikin, District – Sidhi (M.P.)

---- Respondent

For Petitioner : Mr. K.K. Singh, Advocate.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

20/09/2018

1. Heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.

2. On due consideration, leave is granted.

3. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 12.07.2018 passed by Judicial Magistrate First Class, Bilaspur (C.G.) in Criminal Complaint Case No. 558/2017 under Section 138 of the Negotiable Instrument Act, 1881 and Section 420 of IPC wherein, the said court dismissed the complaint for non-prosecution.

4. Learned counsel for the petitioner submits that the power vested to the court of Magistrate by Section 256(1) of Cr.PC. is discretionary and it is up to the said court either he may dismiss

the complaint or adjourn the case. If the complaint is dismissed in such a manner then purpose of said section would be defeated. Therefore, order passed by the court of Judicial Magistrate First Class is liable to be set aside and the case may be restored for hearing.

5. From the order of the trial court, it is not clear whether any process fee was paid for attendance of the respondent and whether any summon was issued or not. Again, it is not clear whether summon is served or unserved or service is awaited. The trial court should ascertain all the pros and cons of the case before terminating the proceeding. The court should be careful while terminating the proceeding that the order is not passed on merit, but it is just sending of record to record room without hearing the parties. As the order of the trial court is not clarified the service of summon or it is awaited, the order passed by the trial court is not sustainable and the same is hereby set aside.

6. The trial court is directed to ascertain whether any process fee was paid or any summon was issued. Again to ascertain whether summon was served or unserved or service is awaited. The trial court may provide opportunity to the present appellant for paying the process fee and then proceed with the matter according to the law and decide the same on merit.

7. It is directed that the petitioner shall appear before the trial court on 2nd November, 2018 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun