

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2192 of 2018**

- Jalaluddin Rizwi S/o Mohd. Bafari Rizwi Aged About 62 Years
R/o Sadar Road, Nawapara, Police Station Nawapara, District
Raipur Chhattisgarh.

---- **Petitioner****Versus**

- Haji Gulaam Murtaza S/o Shri M.D. Waris Husan Aged About 49
Years R/o Shop No. 142 Avion Footwear, Shastri Market, Police
Station Golbazar District Raipur Chhattisgarh.

---- **Respondent**

 For the petitioner : Ms. Raashi Tiwari, Advocate
 For the espondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****23.10.2018.**

1. Heard on IA No.01/18 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and the delay of 476 days in filing the petition is hereby condoned.
3. Also heard on application for leave to appeal under Section 378(4) of CrPC.
4. This petition has been preferred against Order dated 03.3.2017 passed by Judicial Magistrate First Class, Raipur in Criminal Complaint Case No.340/2012 under Section 138 of the Negotiable Instruments Act, 1881 wherein the said Court dismissed the complaint for want of prosecution.
5. The complaint was filed on 27.6.2012 and and it was registered on 07.8.2012. The respondent appeared before the

said Court on 02.11.2015 and thereafter the matter was fixed for stating the particulars of the offence to the respondent on various dates. On 03.3.2017, the appellant was not present and the respondent was also not present. Though the case was fixed for stating the particulars of the offence of the respondent on various dates but it not clear as to why the particulars of the offence has not been stated to the respondent. For stating the particulars of the offence to the respondent presence of the petitioner was not compulsory.

6. Dismissal of the complaint was not the only option before the trial Court. As per Section 256(1) of the CrPC, the trial Court could have adjourned the hearing of the case to some other date but that is not done. The trial Court could have proceeded with the case after stating the particulars of the offence to the respondent and then decide the issues between the parties on merits but that was not done.

7. Looking to the factual matrix of the case, the order passed by the trial Court is not sustainable and the same deserves to be set aside. As the respondent was absent on 03.3.2017 before the trial Court, his presence before this Court is not required.

8. Accordingly, the petition is allowed and the order dated 03.3.2017 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 recording the plea of the respondent.

9. The petitioner shall appear before the trial Court on 13.12.2018 for further proceedings.

10. Consequently, the petition stands allowed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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