

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2029 of 2018**

- Dayashankar Sahu S/o Jagdev Sahu Aged About 43 Years R/o Village Sakriya, Police Station And Tahsil Khadgawaan, District Koriya Chhattisgarh

---- Petitioner**Versus**

1. Smt. Mithila Singh W/o Bhupendra Singh Aged About 38 Years Sarpanch-Gram Panchayat Sons, R/o Village Sons, Police Station And Tahsil Khadgawaan, District Koriya Chhattisgarh
2. Rajesh Tigga Secretary- Gram Panchayat Sons, R/o Village Sons, Police Station And Tahsil Khadgawaan, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

 For the appellant : Shri Sharad Mishra, Advocate
 For respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****01.10.2018.**

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 910 days in filing the petition is hereby condoned.
3. Also heard on application for leave to appeal under Section 378(4) of CrPC.
4. On due consideration, leave to appeal is granted.
5. This appeal has been preferred against Order dated 22.01.2016 passed by Judicial Magistrate First Class, Chirimiri, Distt. Koriya in Criminal Complaint Case No.388/2014 under Section 138 of the Negotiable Instruments Act, 1881 wherein the said Court dismissed the complaint for want of prosecution.

6. It appears from the order sheet of the trial Court that the case was fixed on 22.01.2016 for stating the particulars of the offence to the respondent. For stating the particulars, presence of the respondent was required and presence of the appellant was not compulsory.

7. Dismissal of the complaint was not the only option before the trial Court. As per Section 256(1) of the CrPC, the trial Court can adjourn the hearing of the case to some other date. When the respondents were not present, the trial Court should have proceeded to ensure their presence before the trial Court but this was not done.,

8. The case is sent to record room without hearing the parties and without adjudicating the issues between the parties. Efforts should be made to call both the parties, adduce evidence and then decide the issues between the parties on merits. Looking to the factual matrix of the case, the order passed by the trial Court is not sustainable and the same is hereby set aside. The trial Court is directed to proceed with the case according to the law and decide the matter on its merits. The appellant shall appear before the trial Court for further proceedings on 02.11.2018.

9. Consequently, the petition stands allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE