

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2143 of 2018**

Vijay Kumar, S/o Balbhadra Prasad Sahu, Aged About 26 Years, R/o Village Tanod, Police Station & Tahsil -Pamgarh District -Janjgir-Champa (C.G.)

---- **Petitioner**

Versus

Ramgopal, S/o Ramhanlal Sahu, Aged About 28 Years, R/o Village Lachhanpur, Tahsil Janjgir, District -Janjgir Champa (C.G.)

---- **Respondent**

 For Petitioner : Mr. Indrasen Sahu, Advocate.
 For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

01/11/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Vijay Kumar.
2. For the reasons mentioned in the application, the same is allowed and delay of 3 days in filing the petition is condoned.
3. Also Heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 19.07.2018 passed by Judicial Magistrate First Class, Pamgarh, District-Janjgir-Champa (C.G.) in Criminal Case No. 155/2007, whereby the said court dismissed the complaint filed under Section 138 of the Negotiable Instrument Act, 1881 for want of prosecution.

6. It appears from the order-sheet of the said court that summon was not served on the respondent. Dismissal of complaint was not only option for the trial court under Section 256 of Cr.P.C. The trial court has another option to adjourn the case for some future date. In all cases, the trial court should decide the cases on merits and not send the case to the record room without deciding the issues between the parties. Therefore, order passed by the trial court is not sustainable.
7. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to proceed with the case in accordance with law after providing opportunity to the petitioner to summon the respondent.
8. The petitioner shall appear before the trial court on 3rd January, 2019 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge