

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 2071 of 2018**

- Omprakash Mishra S/o Late Dharnidhar Mishra Aged About 40 Years Caste - Bramhan, R/o Kedarpur, Ambikapur, Ward No. 15, District Surguja, Chhattisgarh. ....(Complainant), District : Surguja (Ambikapur), Chhattisgarh

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

- Rahul Singh S/o B.S. Tomar Aged About 45 Years R/o Sattipara, Ambikapur, Near Arvind Press Police Station And Tahsil - Ambikapur, District Surguja, Chhattisgarh. ....(Accused), District : Surguja (Ambikapur), Chhattisgarh

**---- Respondent**

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| For Petitioner | : | Mr.Yogendra Chaturvedi and Mr.<br>Rahul Mishra, Advocates. |
| For Respondent | : | None though served.                                        |

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**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****04/12/2018**

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. On due consideration, I.A.No.1/2018 is allowed and delay of 60 days in filing the petition is hereby 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. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 24.5.2018 passed by Chief Judicial Magistrate, Ambikapur, District Surguja (C.G.) in Criminal Complaint Case No. 1153/2014, whereby the said court dismissed the complaint filed under Section 138 of the Negotiable Instrument Act, 1881 for want of prosecution.

5. It appears from the record of the trial Court that on 24.5.2018, the case was fixed for recording of evidence of the complainant and same was dismissed on single default.
6. In the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, Hon'ble the Apex Court held that in a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the single default in appearance on the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.
7. In view of this Court, all the cases should be decided on merits and not send the case to record room without deciding the issues between the parties and without providing opportunity to adduce evidence. Dismissal of complaint was not the only option before the trial court. The trial court should have adjourned the case for some other dates as provided under Section 256 (1) of Cr.P.C. but that is not done in the present case, therefore, order passed by the trial court is not sustainable.
8. 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 of evidence to both the parties and decide the issues between the parties on merit.
9. The petitioner shall appear before the trial court on 5<sup>th</sup> February, 2019 and the trial court shall proceed further.

**Sd/**  
**(Ram Prasanna Sharma)**  
Judge

Arun