

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 2119 of 2018**

- Rajesh Kumar Rathore S/o Shri D.B.Rathaur Aged About 27 Years R/o Old Government Primary School Badrapara Ward No.26 Balconagar, Police Station Balconagar Tahsil And District Korba Chhattisgarh.

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

- Mohammad Mustfa Ansari @ Pappu S/o Mohammad Idrish Ansari Aged About 33 Years R/o Near Vishwakarma Mandir, Kuabhata, Ward No. 18 Korba Tahsil And District Korba Chhattisgarh.

**---- Respondents**

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For Petitioner : Shri S.I. Ali, Advocate

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**Hon'ble Shri Justice Ram Prasanna Sharma**  
**Order on Board**

**10/10/2018**

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 6 days in filing the petition is hereby condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (4) of the Cr.P.C.
4. On due consideration, leave is granted.
5. This petition is preferred against the order dated 16.7.2018 passed by the Chief Judicial Magistrate, Korba (CG) in Cr. Case No.1490/2016 under Section 138 Negotiable Instruments Act, 1881, wherein the said Court has dismissed the complaint for want of prosecution. As the respondent is yet to appear before the

trial Court, his presence before this Court is not required.

6. From the order sheet of the trial Court it appears that after registration of Criminal Complaint, the said Court has directed for issuance of notice to the respondent, but from all the order sheets it is not clear whether process fee was paid or not and whether summons were issued or not and if summons were issued, those were served or not or service report is awaited.

7. Dismissal of complaint was not the only option before the trial Court. As per Section 256 Cr.P.C., Court can adjourn the case for some other day. As the order sheets are not showing issuance of summon and its service, the trial Court ought to have made efforts for service of summon and thereafter would have decided the issues between the parties on merits, but that has not been done. Therefore, the order passed by the trial Court is not sustainable and the same deserves to be set-aside.

8. Accordingly, the petition is allowed and the order dated 16.7.2018 passed by the Chief Judicial Magistrate, Korba (CG) in Cr. Case No.1490/2016 is hereby set-aside. Now the matter is remanded back to the trial Court for adjudicating the case afresh. The trial Court shall ascertain whether summon is issued or not and if process fee is not paid, the said Court shall provide opportunity to the petitioner for paying process fee and after service of summon, the matter shall be adjudicated on merits.

9. The petitioner shall appear before the trial Court for further proceedings on 5<sup>th</sup> December, 2018.

Sd/

**(Ram Prasanna Sharma)**

Judge

