

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2112 of 2018**

Tara Traders Proprietor Vinay Kumar Jain S/o Shri Dulichand Jain,
Aged About 34 Years, R/o In Front of Mathur Sine Flax, Main Road
Dallirajhara Tahsil Doundi District Balod (C.G.) ---- **Petitioner**

Versus

Ramesh Kumar Dewangan Proprietor Dewangan Transport and
Building Material Supplier, R/o Village Kumhari Tahsil Manpur
District Rajnandgaon (C.G.) ---- **Respondent**

For Petitioner : Mr. Suresh Kumar Verma, Advocate.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****09/10/2018**

1. Heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
2. On due consideration, leave is granted.
3. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 13.08.2018 passed by learned Judicial Magistrate First Class, Dalli Rajhara, District- Balod (C.G.) in Complaint Case No. 30/2018, wherein the said court dismissed the complaint filed under section 138 of the Negotiable Instrument Act, 1881 for want of prosecution.
4. The complaint case was filed on 18.07.2018 and it was registered on the same date. The trial court directed to issue summon on payment of process fee and case was fixed on 13.08.2018. From the order-sheet dated 13.08.2018, it is not clear that whether process fee is paid for issuing summon. It

is also not clear that whether summon was issued or its service report is awaited.

5. The case was fixed for appearance of respondent/ accused, but it was dismissed for absence of appellant/ complainant. 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.
6. As the trial court has not ascertained whether any summon is issued or not or whether it is served or not, order passed by the trial court is not sustainable. The trial court should make effort to decide the issue between the parties after hearing both sides, but that is not done in the present case.
7. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to ascertain whether summon is issued or not. If process fee is not paid, then the trial court will provide an opportunity to the appellant for paying the same and after appearance of respondent/ accused, the trial court will proceed with the case according to the law.
8. It is directed that the appellant/complainant shall appear before the trial court on 30th November, 2018 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge