

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1781 of 2017**

- Oxford Trade Centre Bilaspur Through Its Proprietor Saiyad Faisal Ali, S/o Late Abrar Ali Aged About 41 Years, R/o Nehru Nagar, Gandhinagar, Bilaspur, Police Station Civil Line, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. Asama Marketting Private Limited Bilaspur Through Its Director, Ratnesh Jaiswal, S/o Late Shri Ramesh Jaiswal, Office In The Name Of Asama Marketting Private Limited Infont Of Sheffer School Mungeli, Road, Bilaspur, District Bilaspur, Chhattisgarh.,
2. Asama Marketting Private Limited, Bilaspur, Through Director Smt. Rashmi Jaiswal, W/o Ratnesh Jaiswal, R/o Infront Of Babji Park Colur Beauteek Ring Road No. 02, In Front Of Patrakar Colony, Bilaspur, Chhattisgarh. R/o In Front Of Pallav Bhavan, Magadh Nagar Bilaspur, Police Station Civil Line Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

---- Respondents

For the petitioner	: Shri Rajendra Kumar Suryawanshi, Advocate
For the respondents	: None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****09.10.2018.**

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 124 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 05.5.2017 passed by Judicial Magistrate First Class, Bilaspur

(CG) in Criminal Complaint Case No.12474/2014 under Section 138 of the Negotiable Instruments Act, 1881 wherein the said Court dismissed the complaint for want of prosecution.

6. Complaint case was filed on 28.10.2014 and it was registered on 17.12.2014. Summons were issued to the respondents which were served on 30.7.2015 and thereafter, bailable warrant for a sum of Rs.5000/- was issued since 30.7.2015. From the perusal of the order sheet it is not clear whether the PF was paid for issuance of bailable warrant or not, whether the bailable warrant was issued after payment of PF or not. It is also not clear whether bailable warrant was served to the respondents or report of service is awaited.

7. On 05.5.2017 the case was fixed for appearance of the respondents, but it was dismissed for want of prosecution. Dismissal of the complaint case 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.

8. As the respondents are yet to appear before the trial Court they are not required to appear in the present appeal. In view of this Court all the cases should be decided on its merits and efforts should be made for presence of both the sides and thereafter parties to be heard, but that is not done in the present case and the case is sent to record room without hearing the parties and without adjudicating the issues between the parties. Looking to the factual matrix of the case, the order passed by the trial Court is not sustainable and the same deserves to be set aside. The

trial Court shall first ascertain whether the PF is paid or not for issuance of bailable warrant . If it is not paid opportunity should be given to the complainant and then the trial Court will proceed in accordance with law.

9. Accordingly, the petition is allowed and the order dated 05.5.2017 passed by the trial Court is hereby set aside. Now the case is remanded back to the trial Court for adjudicating the matter afresh. The trial Court is directed to proceed with the case after recording the plea of the respondents.

10. The appellant shall appear before the trial Court on 30.11.2018 for further proceedings.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**