

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2283 of 2018**

Ramnarayan Ratre, S/o Shri Rajaram Ratre, Aged About 64 Years,
R/o House No. 49, Chhote Madhaipur, Tahsil Janjgir, District- Janjgir-
Champa (C.G.)

---- **Petitioner**

Versus

Smt. Anju Soni, W/o Shri Deepak Soni, R/o Vijaypuram Face-II,
Seepat Road Sarkanda, Police Station- Sarkanda, Bilaspur, District-
Bilaspur (C.G.)

---- **Respondent**

For Petitioner : Mr. R.R. Soni, Advocate.
For Respondent : None.

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

02/11/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Ramnarayan Ratre.
2. For the reasons mentioned in the application, the same is allowed and delay of 418 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 06.05.2017 passed by Judicial Magistrate First Class, Bilaspur (C.G.) in Complaint Case No. 5750/2016, 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 respondent/ accused yet to appear before the said court and summon is unserved on him. The case was at initial stage and 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. In the present case, summon is still unserved on the respondent/ accused, 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 make service to the respondent/ accused.
8. The petitioner shall appear before the trial court on 9th January, 2019 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge