

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.295 of 2019**

- Jethmal And Company through Mohak Jhanwar, S/o. Jethmal Jhanwar Aged About 29 Years R/o Near Bathena Hospital, Raipur Road, Dhamtari Tahsil District Dhamtari Chhattisgarh.

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

- Nirmala Sinha W/o Not Known to the appellant, Proprietor Chirag Garments, Main Road, , Tahsil Narharpur. Distt. Kanker Chhattisgarh.

---- **Respondent**

 For the Petitioner : Shri Sanjeev Kumar Sinha, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****30.01.2019.**

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. This petition has been preferred against Order dated 06.12.2018 passed by Chief Judicial Magistrate, Dhamtari (CG) in Criminal Complaint Case No.1214/2018 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.
3. It appears that the case was fixed for appearance of the respondent/accused on the said date but the complaint was dismissed for not paying the process fee. Dismissal of the complaint case was not the only option before the trial Court. It

should have been adjourned for some other date as per the provisions of Section 256(1) CrMP.

4. In the matter of **Associated Cement Co. Ltd. Vs. Keshvanand** reported in **(1998) 1 SCC 687**, Hon'ble the Apex Court held as under:-

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

Again, 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.

5. In view of this Court, the case should have been decided on merits and it should not have sent to record room without deciding issues between the parties and without providing opportunity to

adduce evidence. But that is not done in the present case, therefore, the order passed by the trial Court is not sustainable.

6. Accordingly, order passed by the trial Court is set aside allowing the petition. The trial Court is directed to proceed with the case after providing opportunity of paying process fee to the appellant and after hearing the respondent the case should be heard on its merits.

7. The petitioner to appear before the trial Court on **14.3.2019** for further proceedings.

Sd/-
(Ram Prasanna Sharma)
JUDGE