

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 379 of 2019**

Smt. Lakshmi Singh, W/o - Shri P.N. Singh, Aged about - 54 years, Caste – Kshatriya, R/o - Chitrakot Road, Dharmapura No.1, Jagdalpur, District - Bastar (C.G.)

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

Shri Himanshu Kumar Tonk, S/o - Shri Dinesh Tonk, Aged about - 30 years, Caste – Gujrati, R/o - Village Kolchur, Pujari Para, Tahsil – Bastar, District – Bastar (C.G.)

---- **Respondent**

For the Petitioner : Mr. Alok Kumar Dewangan, Advocate

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****26.03.2019.**

1. Heard on I.A No.1/2019, application for condonation of delay in filing instant petition.
2. On due consideration, the application is allowed and the delay of 107 days in filing the petition is hereby condoned.
3. Also heard on I.A No. 2/2019, application for exemption from filing copy of complaint, copy of statement of P.W.S. and other exhibited relevant documents.
4. It appears that the complaint was dismissed by the trial Court for want of prosecution, therefore, IA No. 2/2019 for exemption is allowed.
5. Also heard on application for grant of leave to appeal filed under Section 378 (4) of the Cr.P.C.
6. On due consideration, leave is granted.

7. This petition is preferred against order dated 21st August, 2018 passed by Judicial Magistrate First Class, Jagdalpur, District - Bastar (C.G.) in Complaint Case No.196/2018, wherein the said Court dismissed the complaint filed under Section 138 of the Negotiable Instrument Act 1881 for want of prosecution.
8. From order sheet of the said court, it is not clear whether the bailable warrant issued by the trial court is served or not or whether the service report is awaited. The trial court dismissed the complaint on single default by petitioner/complainant.
9. 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.

10. The trial Court should have made effort to summon the respondent and after appearance, the case should have proceeded to decide the issues between the parties, but that is not done. The petitioner/complainant was represented through counsel before the trial Court, but from the order sheet of the said court dated 21st August, 2019, it is not clear whether the trial Court called the counsel for the petitioner or not.

11. Dismissal of the complaint was not the only option before the trial Court. The Trial Court could have adjourned the case to some other date as per the provisions of Section 256(1) CrPC. The court should have proceeded to decide the case on merits after providing opportunity to adduce evidence to both the sides 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.

12. 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 to the complainant/petitioner to issue summon/warrant against the respondent and after appearance of the respondent, the trial court shall proceed with case and decide on merit.

13. The petitioner is directed to appear before the trial Court on 3rd May, 2019 for further proceedings.

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

N.Mohle