

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 735 of 2019**

Pawan Chandrakar, S/o - Kamta Prasad Chandrakar, Aged about - 33 years, R/o - Ashok Nagar, Sarkanda, Power of Attorney of Dr. Nirmal, S/o - Madanlal Nayak, Proprietor-Madan Mahindra, R/o - Green Garden, Mungeli Raod, Tahsil and District - Bilaspur (C.G.)

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

Sheetal Yadav, S/o - Jhanglu Yadav, R/o – Village -Nagrauli, Post - Hardikala (Tona), Police Station- Bilha, District- Bilaspur (C.G.)

---- **Respondent**

 For the Petitioner : Mr. Manoj Mishra, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****13.05.2019.**

1. Heard on I.A. No. 01/2019, application for condonation of delay.
2. On due consideration, the same is allowed and delay of 270 days is hereby condoned.
3. Heard on application under Section 378(4) of the Criminal Procedure Code, 1973.
4. On due consideration, leave is granted.
5. This appeal is preferred against Order dated 19th March, 2018 passed by Judicial Magistrate First Class, Bilaspur (C.G.) in Criminal Complaint Case No.4649/2016, wherein the said Court dismissed the complaint for want of

prosecution filed under Section 138 of the Negotiable Instruments Act, 1881.

6. From the order sheet, it appears that on 19th March, 2018 the case was fixed for recording of evidence of complainant/appellant and it was dismissed for single default.

7. 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.

8. Dismissal of the complaint case 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. As the petition is in nature of restoration of complaint case therefore, the respondent shall have opportunity of hearing before the trial Court and his presence is not compulsory. The trial Court should have decided the issues between the parties, but that is not done in the present case and the record sent to record room without deciding the issues between the parties, therefore, the order passed by the trial Court is set aside.

9. The trial Court is directed to proceed with the case after providing opportunity of hearing to both sides.

10. The petitioner is directed to appear before the trial Court on 16th July, 2019 for further proceedings.

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