

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 768 of 2019**

Shrikant Gupta, Aged about 60 years, Shri Jewelers, Main Road, Gobra, Nawapara, Rajim, Tehsil and District- Raipur, Chhattisgarh.

---- **Appellant**

Versus

Sandeep Gilhare, S/o- Shri Dinesh Gilhare, R/o- Satnami Para, Ward No. 2, Village Kurra, Post Patewa, District-Raipur, Chhattisgarh.

---- **Respondent**

For petitioner : Mr. Sharad Mishra, Advocate
For respondent : Mr. J.K. Gupta, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

03.12.2019.

1. Heard on application under Section 378(4) of CrMP for grant of leave to appeal.
2. On due consideration, leave is granted.
3. This petition is preferred against the order dated 01/01/2019, passed by Judicial Magistrate First Class, Raipur (C.G.) in Criminal Complaint Case No. 1164/2018, filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") wherein the said Court dismissed the case for want of prosecution.
4. It appears from the record of the Trial Court that notice was issued to the respondent/accused and thereafter bailable warrant was also issued but it is not clear from the record whether notice was served to the respondent or whether service report is awaited. If case was fixed for appearance of the respondent in which presence of appellant/complainant was not compulsory therefore, order passed by the trial Court is not proper.

5. 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 the 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.

6. 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. The Court should have proceeded the case to decide the issues between the parties and it should not have sent the

record to record room without deciding issues between the parties but that is not done in the present case, therefore, the order passed by the trial Court is not sustainable.

7. Accordingly, order passed by the trial Court is not proper and same is hereby set aside and allowing the petition. The trial Court is directed to proceed with the case after appearance of respondent and shall decide the issues between the parties on merit.
8. The appellant shall appear before the Trial Court on 21st January, 2020 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE