

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 743 of 2019**

Dinesh Kumar Dubey, S/o - Late Shri Bhushan Prasad
Dubey, Aged about - 64 years, R/o - Yamuna Vihar, N.T.P.C.
Colony, Jamanipali, Tahsil - Katghora, District - Korba (C.G.)

---- Petitioner**Versus**

Deepak Kumar Chandravanshi, S/o - Shri W.D.
Chandravanshi, Aged about - 50 years, R/o - Opposite
Mahila I.T.I. Koni, At Present Resident of MIG 24, Bhagwati
Kunj, Near Garden, Laxmi Nivas Colony, Koni Road,
Sarkanda, Bilaspur (C.G.)

---- Respondent

For the Petitioner : Mr. Ashutosh Shukla, Advocate
For the respondent : None

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

1. Heard on application under Section 378(4) of CrMP for grant of leave to appeal.
2. On due consideration, leave is granted.
3. The appeal is preferred against Order dated 22nd February, 2019 passed by Judicial Magistrate First Class, Katghora, District - Korba (C.G.) in Criminal Case No.1955/2018, wherein the said Court dismissed the complaint for want of prosecution.
4. As the petition is in the nature of restoration of complaint case, presence of respondent is not required because he

will get opportunity of hearing while the trial Court will hear on merit.

5. From record of the trial Court, it is not clear whether the trial Court called the counsel of petitioner during proceeding of the case. The trial Court could have adjourn the case for some other day after hearing counsel of the petitioner/complainant, but that is not done.
6. Dismissal of complaint is not proper for single default as per law laid down.
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. Efforts should have been made to secure the presence of the respondent and the matter should have been decided on merits and it should not have been 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.

9. 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 securing the presence of the respondent and decide the issues on merits.

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

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