

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 877 of 2019**

Brijmohan Agrawal, S/o - Late Shri Kalicharan Agrawal, Aged about - 64 years, Occupation-Business and Agriculture, R/o - Danipara Raigarh, Tahsil, Civil and Revenue District – Raigarh (C.G.)

---- Petitioner**Versus**

Avinash Kumar Sahu, S/o - Late Shri Jamuna Prasad Sahu, Aged about - 61 years, Occupation- Business and Agriculture, R/o - Village Chiraidand, Police Station- Kunkuri, Civil and Revenue District- Jashpur, (C.G.)

Temporary R/o - Apar Bazar, Ranchi (Jharkhand).

---- Respondent

 For the petitioner : Shri Alok Kumar Pandey, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****22.04.2019.**

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 994 days in filing the petition is hereby condoned.
3. Also, heard on application under Section 378(4) of CrMP for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This petition is preferred against the order dated 25th April, 2016 passed by Judicial Magistrate First Class, Raigarh (CG), in Complaint Case No. 223/2009, wherein the said Court dismissed the case for want

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

6. It appears from the order-sheet of the trial court that the case was fixed for hearing on interlocutory application for hearing the interim application. Appearance of the petitioner/complainant was not compulsory.

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 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.

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. The trial Court should have made effort for appearance of the respondent and thereafter, proceed to hear the case on merit but that is not done in the present case, therefore, the order passed by the trial Court is not sustainable.

9. Trial Court is directed to proceed the case after providing opportunity to both sides to adduce the evidence.

10. The petitioner is also directed to appear before the trial Court for further proceedings on 25th June, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE