

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No.822 of 2019**

- Praveen Kesharvani S/o Taranath Kesharvani Aged About 38 Years Pro. Partner Tara Motors, Othorised Dealer Of Sonalika Tractors, Bilaspur Road, Kawardha, District Kabeerdham, Chhattisgarh

---- Petitioner

**Versus**

- Manoj Kumar Chandrakar S/o Salik Ram Chandrakar Aged About 38 Years R/o Village Nanapuri, Post And Thana Pandariya, District Kabeerdham, Chhattisgarh

---- Respondent

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 For the Petitioner : Shri Samir Singh, Advocate  
 For the respondent : None  
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**Hon'ble Shri Justice Ram Prasanna Sharma**  
**Order On Board**

**03.4.2019**

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. This petition has been preferred against Order dated 23.02.2019 passed by Judicial Magistrate First Class, Kabirdham (Kawardha) (CG) in Criminal Complaint Case No.683/2018 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.
3. As the petition is nature of restoration of proceedings before the trial Court and the matter is not going to be decided on merits, presence of the respondent is not required.
4. It appears from the order sheet of the trial Court that the case was fixed for final arguments. The Case was tried as

summon case by the trial Court as per the provisions of Sections 254 & 255 of the CrPC. Any arguments by the parties is not compulsory after recording the evidence, but the trial Court fixed the case for final arguments and dismissed the complaint for want of prosecution, while as per the procedure provided under Sections mentioned above, the trial court could have recorded the finding on the basis of the evidence which is not done and the trial Court without recording its finding sent the records to the record room which is not proper. Therefore, the order passed by the trial Court is not sustainable.

**5.** 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 and adjudicate the matter after deciding the issues between the parties.

**6.** The complainant/petitioner to appear before the trial Court on **09.5.2019** for further proceedings.

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