

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 931 of 2019**

Shailendra Gorakh, S/o - Late Mahesh Gorakh, Aged about - 34 years, R/o - Shivaji Marg, Tikrapara, Thana - City Kotwali, Bilaspur, Tahsil/District - Bilaspur (C.G)

---- Petitioner**Versus**

Santosh Jugmalani, S/o - Gurmukhdas, Aged about - 30 years, R/o - Kargil Chauk, Street No. 01, Jarhabhatha, Sindhi Colony, Thana-Civil Line, Bilaspur, Tahsil / District - Bilaspur (C.G)

---- Respondent

For the petitioner : Mr. Samir Singh, Advocate

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****11.04.2019.**

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 130 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 24th August, 2018 passed by Judicial Magistrate, First Class, Bilaspur (C.G.), in Criminal complaint Case No. (NIA) 124/2015 wherein the said Court dismissed the case for want of prosecution 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 appearance of the respondent/accused for which presence of complainant/petitioner 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 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 after appearance of the respondent and the case shall be decided on merit.

10. The petitioner is directed to appear before the trial Court on 18th June, 2019 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE