

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 936 of 2019

Anand Kumar Agrawal, S/o - Late Shri Fekan Lal Agrawal, Aged about - 52 years, R/o Village- Baloda, Police Station and Tahsil- Baloda, District- Janjgir- Champa (C.G.)

---- Petitioner

Versus

Sukhnandan Jaisani, S/o - Ganesh Ram Jaisani, Aged about 36 years, R/o - Ward No. 13 Baloda, Beside of Lalit Shyam School, Police Station and Tahsil- Baloda, District- Janjgir- Champa, (C.G.)

---- Respondent

For Petitioner : Shri Ritesh Verma, Advocate.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

12/04/2019

1. Heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
2. On due consideration, leave is granted.
3. This appeal is against order dated 26th February, 2019 passed by Judicial Magistrate First Class, Akaltara (C.G.) in Criminal Case No. 82/2018 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act, 1881) wherein the said Court dismissed the complaint for want of prosecution.
4. It appears from the order-sheet of the trial Court that respondent/accused is not appeared before the trial Court and case was fixed for his appearance, therefore, his appearance is not required. The case is fixed for appearance for respondent because

notice was not served to him and it was not fixed for presence of appellant/complainant.

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 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.

6. Dismissal of complaint was not the only option before the trial Court.

The trial Court could have adjourned the case for some other date

as per the provisions of Section 256(1) CrPC. The trial Court should have made effort for appearance of respondent, but that is not done in the present case and without deciding the issues, the record was sent to record room, therefore, the order passed by the trial Court is not sustainable.

7. The trial Court to proceed with the case after issuing summon to respondent for his appearance and after appearance of respondent disposed of the matter according to law after providing opportunity to adduce evidence to both sides.
8. The appellant/complainant to appear before the trial Court for further proceeding on 19th June, 2019.

Sd/-
(Ram Prasanna Sharma)
Judge