

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1182 of 2019**

- Piyush Sharma S/o Rajendra Sharma Aged About 30 Years R/o Press And Media House, Behind Telibandha, Shyam Nagar, Police Station Telibandha, Raipur, District Raipur Chhattisgarh. (Complainant)

---- **Petitioner****Versus**

- Anil Kumar Sahu S/o Itwari Ram Sahu Aged About 35 Years R/o Jorapara, Near Vivek Enterprises In The Street, Badhaipara, Raipur, District Raipur Chhattisgarh. (Accused)

---- **Respondent**

 For the Petitioner : Shri AD Kuldeep, Advocate
 For the Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

13.5.2019

1. Heard on IA No.01/2019 for condonation of delay in filing the instant petition.
2. On due consideration, the application is allowed and the delay of 99 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(4) of CrPC.
4. This petition has been preferred against Order dated 30.10.2018 passed by Judicial Magistrate First Class, Raipur (CG) in Criminal Complaint Case No.64/2017 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.

5. It appears that case was fixed for appearance of the respondent/accused. It was not fixed for appearance of the complainant/petitioner and the case was dismissed for non-appearance of petitioner.

6. 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.”

7. 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. Dismissal of the complaint was not the only option before the trial Court. If process fee was not paid, the trial Court should

have provided opportunity to pay the process fee and after appearance of the respondent, it should have proceeded to decide the issues between the parties, but that is not done and the record was sent to record room without deciding issues between the parties. 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 providing opportunity to the petitioner to pay process fee for appearance of the respondent.

10. The complainant/petitioner to appear before the trial Court on **16.7.2019**.

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