

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1384 of 2018

Vineet Bhattar, S/o - Shri Naresh Bhattar, Aged about - 32 years,
Pro. Shivani Finance Off./o Shop No. 2, Kishan Mill Complex,
Lavan Road, Ambedkar Chawk, Bhatapara, Tahsil & District
Baloda Bazar, (C.G.)

---- Petitioner

Versus

Vishnu Prasad Sahu, S/o - Ramashankar Sahu, R/o - House No.
237, Village Pavni, Tahsil Bilaigarh District Raipur, (C.G.)

---- Respondent

For Petitioner	:	Shri Mayank Chandrakar, Advocate
For Respondent	:	Shri A.D. Kuldeep, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

03.04.2019

1. Heard on I.A. No. 01/2018, an application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 552 days in filing the petition is hereby condoned.
3. Also heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This appeal is preferred against the order dated 25th October, 2016 passed by Judicial Magistrate First Class, Balodabazar (C.G.) wherein the said Court dismissed the Criminal Complaint Case No. 1265/2015 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short . 'the Act, 1881') for want of prosecution.
6. From the order sheet, it appears that counsel Shri Nikhil Agrawal was appearing on behalf of appellant/complainant in the trial Court. In the order-sheet dated 25.10.2016, he did not appear before the trial Court

which was fixed for recording the evidence of the accused and the presence of the complainant is 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.”

8. 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.

9. Dismissal of complaint was not the only option before the trial court.

As the evidence of the respondent is yet to be started, the trial court could have adjourned the case for some other day as per provisions of Section 256(1) of the Cr.P.C. Efforts should be made to decide the issues between the parties but that is not done. The complaint is filed for deciding the issues between the parties but the Court dismissed the complaint for want of prosecution and sent record to the record room without deciding the issues between the parties. Order passed by the trial Court is not sustainable.

10. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court shall proceed with the case after providing opportunity to adduce the evidence of both sides and decide the issues between the parties. The petitioner to appear before the trial Court for further proceeding on 15th May, 2019.

11. Record of the trial Court be sent immediately.

Sd/-
(Ram Prasanna Sharma)
Judge

Vasant.