

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1974 of 2018**

- Shashi Bhushan Pandey S/o Shri R.S. Pandey Aged About 38 Years R/o Jorapara New Sarkanda, (Near Balti Factory) Police Station- Sarkanda, Tahsil And District- Bilaspur, Chhattisgarh.

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

- Laxmi Prasad Baiswade S/o Late Chandu Lal Baiswade Aged About 40 Years R/o Village- Bharvidih, Via- Singhri, (Lakhram) Police Station- Ratanpur, Tahsil And District- Bilaspur, Chhattisgarh.

---- **Respondent**

 For the Petitioner : Shri SB Pandey, Advocate
 For the Respondent : Shri Pawan Shrivastava, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

19.02.2019.

1. Heard on IA No.01/2018 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application the same is allowed and the delay of 468 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. The petitioner has filed revision against order dated 25.3.2017 passed by Judicial Magistrate First Class, Bilaspur and the same is decided by the Sixth Additional Sessions Judge, Bilaspur on 09.3.2018. Thereafter this petition is filed on 29.9.2018.
5. On due consideration, leave is granted.

6. This petition has been preferred against Order dated 25.3.2017 passed by Judicial Magistrate First Class, Bilaspur in Criminal Case No.10540/2014 wherein the said Court dismissed the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 for want of prosecution.

7. It appears from the order sheet dated 25.3.2017 of the trial Court that the case was fixed for stating the particulars of the offence to the respondent. On that date presence of the petitioner/complainant was not compulsory because the case was not fixed for recording the evidence of the complainant/petitioner.

8. 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.

9. Dismissal of the complaint case was not the only option before the trial Court. It could have adjourned the case to some other date as per the provisions of Section 256(1) CrPC.

10. In view of this Court, the case 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.

11. Accordingly, order dated 25.3.2017 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 after providing opportunity of adducing evidence to both sides and after stating particulars to the respondent and decide the issues between the parties on merit.

12. The parties to appear before the trial Court on **10.4.2019** for further proceedings.

Sd/-
(Ram Prasanna Sharma)
JUDGE