

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2170 of 2018**

Rajendra Tiwari, S/o Chuman Tiwari, Aged About 56 Years, R/o Ramjanki Mandir, Camp No. 1, Near Water Tank, Ward No. 21, Bhilai, District- Durg (C.G.)

---- **Petitioner**

Versus

Akhilesh Singh, S/o Dhupnath Singh, Aged About 35 Years, Near Water Tank and Beside House of Devi Prasad Tiwari, Near Ramjanki Mandir, Ambedkar Nagar, Camp No. 1, Bhilai, Ward No. 21, District- Durg (C.G.)

---- **Respondent**

 For Petitioner : Mr. Tarun Dansena, Advocate.
 For Respondent : Ms. Neha Verma, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board**

15/01/2019

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, the same is allowed and delay of 82 days in filing the petition is 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 petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 23.04.2018 passed by Judicial Magistrate First Class, Durg, District- Durg (C.G.) in Case No. 3167/2016, whereby the said court dismissed the complaint filed under Section 138 of the Negotiable Instrument Act, 1881 for want of prosecution.

6. It appears from the order-sheet of the said court that particular of offence is to be stated to the respondent, but the trial court has not stated particular of offence to the respondent. The case is at initial stage and it was dismissed for want of prosecution.
7. In view of this Court, all the cases should decide on merit and not send the case to record room without deciding the issues between the parties. Dismissal of complaint was not the only option before the trial court. The trial court should have adjourned the case for some other dates as provided under Section 256 (1) of Cr.P.C. for stating particular of offence to the respondent. After stating particular of offence to the respondent, the case should have been fixed for evidence of both side, but that is not done in the present case, therefore, order passed by the trial court is not sustainable.
8. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to proceed with the case after stating particular of offence to the respondent and recording evidence of both side and after hearing both the parties, the trial court shall proceed with the case and decide the issue between the parties on merit.
9. Both the parties shall appear before the trial court on 12th March, 2019 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge