

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2264 of 2018**

- Lilaram Khare S/o Kapil Khare Aged About 36 Years R/o Village Mekri, Post Rasouta, Present Address Meubhatha Chowk, Meu, Post Meu, Police Station And Tahsil Pamgarh, District - Janjgir - Champa, Chhattisgarh.

---- Petitioner

Versus

- Shankar Khunte S/o Rampyare Khunte Aged About 55 Years R/o Village Mahka, Post Rahoud, Tahsil And Police Station Pamgarh, District - Janjgir-Champa, Chhattisgarh.

---- Respondent

 For the Petitioner : Shri Suresh Kumar Verma, Advocate
 For the respondent : None present though served

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

23.01.2019.

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. This petition has been preferred against Order dated 10.7.2018 passed by Judicial Magistrate First Class, Pamgarh, Distt. Janjgir-Champa (CG) in Criminal Complaint Case No.43/2017 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.
3. It appears from the record of the trial Court that both the parties have been provided opportunity to adduce evidence. Statement of the accused/respondent was recorded under Section 313 CrPC and then the matter was posted for final arguments of the case on the said date. When the case was fixed for final

arguments, personal appearance of the appellant/complainant was not compulsory.

4. 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.

5. Dismissal of the complaint case was not the only option before the trial Court. It should have been adjourned for some other date as per the provisions of Section 256(1) CrMP. As the case has already been concluded and after arguments judgment

had to be delivered, but that is not done. The trial Court should have decided the case on its merits but without deciding the issues between the parties, dismissed the complaint for want of prosecution which is not proper and the same is not sustainable.

6. Accordingly, order passed by the trial Court is set aside allowing the petition. The trial Court is directed to proceed with the case on merits after providing opportunity of hearing to both the sides and decide the case on merits after concluding it on merits.

7. The parties to appear before the trial Court on **12.03.2019** for further proceedings.

8. Record of the trial Court be sent immediately.

Sd/-
(Ram Prasanna Sharma)
JUDGE