

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2424 of 2018**

- Saket Jain S/o Motilal Jain Aged About 30 Years Proprietor Mahaveer Trading Company R/o Sector -2 Q. No. 16, Police Station Sector -6 Kotwali Bhilai Nagar, Tahsil And District Durg Chhattisgarh.

---- Petitioner

Versus

- Satyendra Pandey R/o Sadak No. S.P.A. Q.No. 8A, Sector -5 Police Station Sector -6, Kotwali Bhilai Nagar Tahsil And District Durg Chhattisgarh.

---- Respondent

 For the Petitioner : Shri Shobhit Mishra, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

12.3.2019.

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 09.10.2018 passed by Judicial Magistrate First Class, Durg (CG) in Complaint Case No.5192/2015 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.
3. As the petition is nature of restoration of proceedings before the trial Court and the matter is not going to be decided on merits, presence of the respondent is not required.
4. Dismissal of the complaint 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. As the

petitioner/complainant is willing to prosecute his case, opportunity to proceed with the case should be provided to him. As the case is not decided on merits, opportunity should be provided to both sides to adduce evidence.

5. In view of the above, order passed by the trial Court is set aside allowing this petition. The trial Court is directed to proceed with the case and dispose of the same in accordance with law.

6. The complainant/petitioner to appear before the trial Court on **02.5.2019** for further proceedings.

7. Record of the trial Court be sent immediately.

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