

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2456 of 2019

- Snehlata Gupta, W/o- Abhishek Agrawal, R/o- Near Amar Petrol Pump, Behind Banaras Chowk, Ambikapur, District- Surguja (C.G.) **---- Petitioner**

Versus

1. Abhishek Agrawal, S/o- Late Ramesh Chand Agrawal, Aged about- 34 years,
2. Ahilya Bai Agrawal, W/o- Late Ramesh Chand Agrawal, Aged about- 63 years,
Appellants No. 1 & 2 R/o- House No. C 402 Kasrat Heritege Dubey Colony, Mowa, Raipur (C.G.)
3. State of Chhattisgarh, through- District Magistrate- Ambikapur, District- Surguja (C.G.) **---- Respondents**

For Petitioner : Shri Sanjay Pathak, Advocate.

For State/Respondent No. 3 : Smt. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

18/11/2019

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 423 days in filing the instant petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the order dated 10th July, 2018 passed by Judicial Magistrate First Class, Ambikapur, District- Surguja (C.G.) in Complaint Case No. 1177/2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act, 1881') wherein the said Court dismissed the complaint for want of prosecution.

5. From the record, it appears that the case was fixed for appearance of respondents/accused, it was not fixed for appearance of complainant/appellant.
6. 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.

7. Dismissal of complaint was not the only option before the trial Court. The trial Court should have proceeded with the case for serving summon to respondents they are appeared should have proceeded to issue between the parties, but that is not done in the present case. Without deciding the issues between the parties, the record was sent to record room, therefore, the procedure adopted by the trial Court is not proper and same is liable to be set aside.
8. Accordingly, the instant appeal is allowed and the order passed by the trial Court is hereby set aside. Now the case is remanded back to the trial Court for deciding the case after hearing the parties. The trial Court is directed to decide the case after service of notice to respondents and shall proceed with the case on merit.
9. The appellant to appear before the trial Court for further proceeding on 8th January, 2020.

Sd/-

(Ram Prasanna Sharma)
Judge