

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 2497 of 2019

- Munna Lal Dhruve Aged About 47 Years S/o Late Mahadev Dhruve R/o Wadrafnagar, Tahsil Wadrafnagar, District Balrampur, Chhattisgarh

---- Petitioner

Versus

- Bachchu Khan (Bhai) S/o Shekh Noor, Aged About 50 Years Occupation Peon, R/o Village Post Khallari, Tahsil Mahasamund, District Mahasamund, Chhattisgarh, Present Posting Post Metric Boys Hostal Arang District Raipur, Chhattisgarh.

---- Respondent

 For the Petitioner : Shri Akath Kumar Yadav, Advocate
 For the Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****20.11.2019.**

1. Heard on application under Section 378(4) of CrPC for grant of leave to appeal.
2. On due consideration, leave is granted.
3. This petition has been preferred against Order dated 27.09.2019 passed by the Judicial Magistrate First Class, Wadrafnagar, District Balrampur (CG) in Complaint Case No. 51 of 2018 for offence under Section 138 of the Negotiable Instruments Act, 1881, wherein the said Court dismissed the complaint filed by the petitioner for want of prosecution.

4. It appears from the order sheet that both parties were not present before the trial court. Dismissal of the complaint case was not the only option before the trial Court. It should have adjourned the case for some other date as per the provisions of Section 256(1) CrMP.

5. 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 bailable warrants were issued against the respondents by the said Cou 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.

6. 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.

7. Accordingly, order passed by the trial Court is set aside by allowing the petition. After appearance of the respondent, the trial Court is directed to proceed with the case on merits.

8. The petitioner to appear before the trial Court on **09.01.2020** for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE