

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2555 of 2018**

- Kamlesh S/o Kantilal Dedhiya Aged About 36 Years R/o Bagdai, Post And P. S. Tahsil Dongargaon, District Rajnandgaon Chhattisgarh

---- **Petitioner****Versus**

- Smt. Manjeet Kaur W/o. Gurdayal Singh Aged About 42 Years R/o House No. 237, T, Gurusagar Nagar, Doctor Sakore Murgifarm, Heerapur, Tatibandh, Raipur Tahsil And District Raipur Chhattisgarh

---- **Respondent**

 For the Petitioner : Shri N. Naha Roy, Advocate
 For the respondent : Shri Ratnesh Agrawal, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

14.3.2019.

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 12.10.2018 passed by Judicial Magistrate First Class, Raipur (CG) in Complaint Case No.256/2015 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.
3. It appears from the record of the trial Court that the case was fixed for recording the statement of defence witnesses and it was not fixed for appearance of the petitioner/complainant. Therefore, presence of the petitioner was not compulsory on that date.

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.”

5. 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. 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. The trial Court should have adjourned the case for some other day for recording the statement of the defence witnesses but that is not done and the record was sent to record room without deciding issues

between the parties and without providing opportunity to adduce evidence. Therefore, the order passed by the trial Court is not sustainable.

7. Accordingly, order passed by the trial Court is set aside allowing the petition. The trial Court is directed to proceed with the case after recording evidence of the defence witnesses and dispose of the same as per law.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE