

02HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 497 of 2018**

- Ashok Sharma, S/o - Late Bhagwaan Sahah Sharma Aged About 75 Years R/o Laxmi Bhawan, Siddhrath Chowk, Police Station- Tikrapara, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner**Versus**

- Md. Naim Khan S/o Md. Shafiq R/o House No. G-17(A), Shri Ram Nagar, Anupam Girh Nirman Society, Raipur, Tahsil And District- Raipur, Chhattisgarh. At Present R/o Sahdaab Kirana Stores, In Front Of Khuteri Majjid, Village- Khuteri, Police Station- Mandir Hasaoud, Post-Godi, Tahsil- Mandir Hasaoud, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent

For petitioner : Mr. Rishi Mahovia, Advocate on behalf of
Mr.A. K. Prasad.

For Respondent : None for the respondent though served.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****19/02/2019**

1. This petition is preferred against order dated 22nd September, 2018, passed by Judicial Magistrate First Class, Raipur, District Raipur (CG) in Criminal Complaint Case No. 8462/2014, filed under Section 138 of Negotiable Instruments Act, 1881, wherein the said court has dismissed the complaint for want of prosecution.
2. It appears from the ordersheets of the trial court that the case was fixed for recording evidence of the appellant/complainant, but he was not present on the said date and that is why the trial court opted to dismiss the complaint. Dismissal of

complaint was the only option before the trial court. It could have adjourned the case to some other date as per provisions of the section 256 (1) of the Cr.P.C. The case should have been decided on merits and it should not have been sent to the 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.

3. Accordingly, the order dated 22.9.2018 is set aside. The trial Court is directed to proceed with the case after providing opportunity of adducing evidence to both the parties and decide the issues between the parties on merit.
4. The appellant/complainant shall remain present before the trial Court on 10th April, 2019 for further proceedings.
5. Record the trial court be sent immediately.

Sd/-
(Ram Prasanna Sharma)
Judge