

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 70 of 2020**

Sahdev Pradhan S/o Late Kashi Pradhan Aged About 49 Years R/o Village Sargawan Police Station Gandhinagar Tehsil Ambikapur District Surguja Chhattisgarh. ---- **Petitioner**

Versus

Pokhraj Singh S/o Late Jograj Singh Aged About 35 Years Director Aadi Group, R/o Basantlal Seth Marg Gali, Ambikapur, Police Station and Tehsil Ambikapur District- Surguja Chhattisgarh. ---- **Respondent**

For petitioner : Mr. Nishi Kant Sinha, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board**14.01.2020.**

1. Heard on application under Section 378(4) of CrMP for grant of leave to appeal.
2. On due consideration, leave is granted.
3. As the respondent is yet to appear before trial Court, therefore, his presence before this Court is not required.
4. This petition is preferred against the order dated 10/12/2019 passed by Learned Judicial Magistrate First Class, Ambikapur, District- Surguja (C.G.) in Criminal Complaint Case No. 695/2018, filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") wherein the said Court dismissed the case for want of prosecution.
5. It appears from the record of the trial Court that the case was fixed on 10th of December, 2019 for appearance of the respondent/accused because he has not been served. On the said date appearance of the petitioner was not compulsory but the case was dismissed on single default.

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 the 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 the complaint case was not the only option before the Trial Court. The Trial Court could have adjourned the case to some other date as per the provisions of Section 256(1) CrPC. The Court should have proceeded the case to decide the issues between the parties and it should not have sent the record to record room without deciding issues between the

parties but that is not done in the present case, therefore, the order passed by the trial Court is not sustainable.

8. Accordingly, order passed by the trial Court is not proper and same is hereby set aside, allowing the petition. The trial Court is directed to proceed with the case after appearance of both sides and shall decide the issues between the parties on merit.
9. Petitioner shall appear before the trial Court on 18th of February, 2020 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE

N.Mohle