

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.466 of 2020**

- M/s. Rit Enterprises, through Proprietor Ashok Kumar Goyal son of Late Omprakash Goyal, aged about 40 years, R/o. Beside MIG-16, Om Provision Store, Dr. Rajendra Nagar, Phase-2, Kosabadi Korba Police Station Tahsil & Distt. Korba (CG)

---- Petitioner

Versus

1. Smt. Shakuntala Tiwari Wife of late Tulsi Prasad tiwari
2. Anand Tiwari son of late Tulsi Prasad Tiwari

Both are R/o. Irrigation Colony, ITI Rampur Ward No.33,
Korba Police Station Tahsil & District Korba (CG)

---- Respondents

For the Petitioner : Shri Suryakant Mishra, Advocate
For the Respondents : --

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****19.02.2020**

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 10.12.2019 passed by Judicial Magistrate First Class, Korba (CG) in Criminal Case Case No. 3769/2019, filed 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 of the trial Court that the case was fixed for appearance of respondent/accused and it was not fixed for appearance of the petitioner. r

5. The case was fixed for appearance of the respondent therefore, presence of the petitioner was not compulsory 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.

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. The trial Court should have proceeded with the case after appearance of both side and should have decided between the parties but that is not done. The procedure adopted by the trial Court is not proper. Accordingly, order passed by the trial Court is set aside by allowing the petition. The trial Court is directed to proceed with the case after appearance of both sides.

8. The petitioner to appear before the trial Court on 30.03.2020 for further proceedings.

Sd/-
(Ram Prasanna Sharma)
JUDGE