

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1130 of 2018**

Gurbaksh Singh, S/o- Shri Ravel Singh, Aged about- 50 years, R/o- Ward No. 9, Manendra P. S. and Tahsil Manendragarh, District- Koriya Chhattisgarh. **---- Petitioner**

Versus

Ravi Agrawal @ Rishu, S/o- Jagdish Prasad Agrawal, Aged about 38 years, R/o- Besides Agrawal Lodge, Police Station and Tehsil Manendragarh, District- Koriya Chhattisgarh. **---- Respondent**

 For petitioner : Mr. Shakti Raj Sinha, Advocate
 For Respondent : Mr. Vaibhav Shukla, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****06.01.2020.**

1. Heard on application filed under Section 378(4) of CrMP for grant of leave to appeal.
2. On due consideration, leave is granted.
3. This petition is preferred against the order dated 29th of November, 2017 passed by Learned Judicial Magistrate First Class, Manendragarh, District- Koriya (C.G.) in Criminal Complaint Case No.742/2015, 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.
4. It appears from the record of the trial Court that Counsel for the petitioner was present on the said dated i.e. 29th of November, 2017 and he filed an application under Section 256 of CrPC for dispensing presence of the petitioner but the application was rejected by the trial Court and respondent was acquitted.

5. Learned counsel on behalf of the respondent submits that trial Court has properly exercised its discretion vested under Section 256(i) of the CrPC. Therefore, it is not a case where case should be heard on merit by the trial Court. He further placed reliance in the matter of **Champalal Kapoorchand Jain Vs. Navyug Cloth Stores**, reported in **2019 SCC Online Bom 4805**.
6. The case cited by the respondent is distinct to the facts of the present case because of the said case complainant and his counsel was absent when the case was called for, but that is not the case here.
7. In the present case, counsel for the petitioner has filed an application for adjourning the case which was dismissed by the trial Court. The point is whether the discretion vested in the trial Court under Section 256(i) of CrPC is rightly exercised by the trial Court. It appears from the order sheet of the trial Court that the said Court liberally adjourned the case since 18th of July, 2016 to 29th of November, 2017.
8. Dismissal of the complaint was not only option before the trial Court, it could have adjourned the case for some other days as per provision of the Section 256(i) of the CrPC. On 5th of July, 2017 the case was fixed for compromise between the parties but the parties have not settled their dispute through compromise that is why the case was again fixed for adducing of the evidence. The trial Court has not warned the petitioner that if he will not adduce the evidence on the date of hearing his case shall be dismissed. Even than, case was dismissed without deciding the issues between the parties.

In view of this Court when counsel for the petitioner filed an application for adjourning the case, the trial Court should have warned the party and the case should not have been sent to record room without deciding the issues between the parties.

In view of this Court the one more opportunity be provided to the petitioner to adduce the evidence. However, the case should be decided within time frame.

9. 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 providing opportunity of adducing the evidence to both sides. The trial Court will provide opportunity to the parties for adducing the evidence for four months, in that period the trial Court may give dates as per convenience of the parties.

10. Both sides shall appear before the trial Court on 11th of February, 2020 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE