

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1910 of 2019**

Sumit Singh Bhalla S/o. Kulwant Singh Bhalla, aged 35 years, R/o. Qr. No.9/F, Street No.8, Sector No.4, Bhilai District Durg (CG)

---- Petitioner

Versus

B. Prakash Rao S/o. DG Krishna R/o. QR. No.116/D, Zone-I, Charoda PS Bhilai-3 Tahsil Patan District Durg (CG)

---- Respondent

 For the Petitioner : Shri Shikhar Bhaktiyar, Advocate
 For the Respondent : --

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****05.3.2020**

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 08.7.2019 passed by Judicial Magistrate First Class, Durg (CG) in Criminal Complaint Case Case No. 32403/2013, 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 it was dismissed for single default. 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.

5. 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.

6. The trial Court should have proceeded to decide the issues 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 in accordance with law.

7. The petitioner to appear before the trial Court on **15.4.2020** for further proceedings.

Sd/-
(Ram Prasanna Sharma)
JUDGE