

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2588 of 2019**

Kamesh Agrawal S/o Murlidhar Aged About 36 Years R/o Chirayu Medical Stores, Akaltara, Police Station Akaltara, District Janjgir-Champa, Chhattisgarh.

---- Petitioner**Versus**

Shivkumar Yadav S/o Puniram Aged About 47 Years Office Sub Divisional Officer, Champa, Branch Nahar, Sub Division No. 21, Tahsil Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For petitioner : Mr. N.K. Chatterjee, Advocate

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

1. Heard on application for grant of leave to appeal under Section 378(4) of the Cr.P.C.
2. On due consideration, leave is granted.
3. This petition is arising out of judgment dated 5th of November, 2019 passed by learned Sessions Judge, Janjgir-Champa (C.G.) in Criminal appeal No. 84/2019, arising out of order dated 16th of September, 2019 passed in Criminal Complaint Case No. 763/2017 by Judicial magistrate First Class, Akaltara, District- Janjgir-Champa (C.G.), 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. In the present case, the complaint was filed before the Court of Judicial magistrate First Class, Akaltara, District- Janjgir-Champa (C.G.) which was register as complaint case No. 763/2017 on the date of hearing i.e. 16th of September, 2019,

the case was fixed for full proceeding. In earlier date the case was fixed for argument for interim application, when the case was fixed for further proceeding the presence of appellant/complainant was not compulsory before the trial Court but the case was dismissed for single default.

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 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.

6. 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. Issues between the parties has not decided and proceeding was terminated without deciding the matter on merit.

7. Accordingly, the order passed by the trial Court i.e. Judicial Magistrate First Class, Akaltara on 16th of September, 2019 is not sustainable and same is hereby set-aside allowing the petition.
8. The trial Court i.e. Judicial Magistrate First Class, Akaltara 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 30th of March, 2020 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE