

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No.970 of 2020**

- Falendra Chouhan, S/o Late Jeevram Bhai Chouhan, Aged About 63 Years, R/o D-4, Devendra Nagar, P.S. Devendra Nagar, Raipur, District Raipur, Chhattisgarh

**---- Petitioner**

**Versus**

- Jawahar Lal Jaiswal, S/o Jamuna Prasad Jaiswal, Prop. M/s Jaiswal Brothers, In Front Of Doshi Meson House, Near New Gayatri Tiffin Centre, Near House Of Hemant Sahu, Raman Mandir Ward, Fafadih, P.S. Ganj Thana, District Raipur, Chhattisgarh

**---- Respondent**

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For Petitioner

Mr. Shrawan Agrawal, Advocate

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**Hon'ble Justice Shri Deepak Kumar Tiwari**

**Order On Board**

**08/12/2021**

1. Heard on application filed under Section 378 (4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal
2. On due consideration, leave is granted.
3. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against the order dated 25.01.2020 passed by the Judicial Magistrate First Class, Raipur in Criminal Complaint Case No.3436/2018 under Section 138 of the Negotiable Instruments Act, 1881 between Falendra Chouhan vs Jawahar Lal Jaiswal, whereby the said Court dismissed the complaint for want of prosecution.

4. It appears from the order sheet of the said court that on 09.01.2020, the Presiding Officer was on leave and the case was fixed for further proceeding on 25.01.2020. On the said date, the appellant/complainant did not appear, therefore, the case was dismissed for want of prosecution.
5. It appears that the complaint case was filed on 25.07.2018 and after the case was registered under Section 138 of the Negotiable Instrument Act, the case was continuously fixed for appearance of the respondent/accused and for several dates the appellant/complainant has paid process fees and ultimately the Court has also ordered for bailable warrant against the accused, but the presence of the accused is not yet secured.
6. It is established that dismissal of complaint was not the only option before the Trial Court but all the cases should be decided on merits and not send cases to the record rooms without deciding the issues between the parties. Looking to the peculiar fact that on 09.01.2020, the Presiding Officer was on leave and on the next day, the case was dismissed in default so this Court is of the view that to decide the case on merits, it would be appropriate to provide opportunity to the complainant to prove its case on merits and if he again deliberately makes any default, then the learned Magistrate may pass the appropriate order according to law.
7. For the aforesaid reason, the order passed by the Trial Court is set aside allowing the petition. The Trial Court is directed to proceed with the case in accordance with law after providing opportunity of hearing to the petitioner/complainant to serve notice on the respondent and after serving notice, the Trial Court shall proceed further with the case and decide the issue between the parties on merits.

8. The complainant/appellant shall appear before the trial court on 20.01.2022 and the Trial Court shall proceed further.

Sd/-

Deepak Kumar Tiwari  
Judge

Nirala