



2026:CGHC:7401

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 1374 of 2019**

Rama Industries Proprietor- Subham Chauksey, S/o Shri Rakesh Chauksey, Age About 29 Years, R/o Tarbahar Police Station- Tarbahar, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh.

**... Petitioner(s)****versus**

Abhilash Tiwari S/o Shri Vijay Kumar Trivedi R/o Beside Raj Digital Studio, Opposite Bus Stand, Pathariya, District- Mungeli, Chhattisgarh, Permanent Address- Abhilash Tiwari, S/o Shri Vijay Kumar Trivedi (Chotey Babu), R/o Village Khapri, Post Lauda, Police Station- Pathariya, District- Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh.

**... Respondent(s)**

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For Applicant(s) : Mr. K.P.S. Ghandi, Advocate.

For Respondent(s) : Mr. Banhiman Roy, Advocate.

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**Hon'ble Shri Ramesh Sinha, Chief Justice****Order on Board****10/02/2026**

1. The applicant has filed this petition against the order dated 14.02.2019 passed by learned Judicial Magistrate First Class Bilaspur (C.G.) whereby, the learned trial Court has dismissed the complaint case filed by the applicant under Section 138 of N.I. Act. Hence, this petition.
2. Brief facts necessary for disposal of this petition are that the petitioner/complainant is engaged in the business of sale of animal



feed, whereas the accused/respondent is engaged in dairy operations under the name and style of *Rama Industries*. On 27.06.2017, the accused/respondent purchased livestock feed (fodder) worth Rs. 54,000/- from the petitioner/complainant. At the time of purchase, the accused/respondent made payment through cheque bearing No. 308983 dated 27.06.2017 for an amount of Rs. 54,000/-, drawn on State Bank of India, Pathariya Branch, Mungeli (Chhattisgarh), in favour of the applicant/complainant firm. On 05.08.2017, the petitioner/complainant deposited the said cheque in the account of his firm. However, on the same day, the cheque was dishonoured, as per the bank memo, due to insufficient balance in the account of the accused/respondent. Thereafter, on 25.08.2017, the complainant/applicant, through his counsel, sent a legal notice to the accused/respondent. Despite service of the notice, the accused/respondent neither made payment of the cheque amount nor sent any reply. Consequently, the complainant/petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate First Class. The case was registered as Complaint Case No. 764/2017.

3. On 09.01.2019, the case was transferred to the Court of Judicial Magistrate First Class, Bilaspur (Chhattisgarh). The counsel for the petitioner noted the next date as 06.03.2019 in the order sheet. However, on the said date, the learned trial Court issued a bailable warrant, and thereafter the case was listed on 11.02.2019. Thereafter, the learned trial Court dismissed the complaint case for want of prosecution on 14.02.2019.



4. Learned counsel for the petitioner most respectfully submits that the impugned judgment and order of acquittal passed by the learned trial Court are bad in law as well as on facts, being illegal, improper and contrary to the evidence on record, and thus liable to be set aside. The learned trial Court failed to properly appreciate the material evidence and legal position, particularly ignoring the admission of the accused/respondent during examination that he had issued the cheque of Rs. 54,000/-. The Court further erred in dismissing the complaint for want of prosecution despite the counsel having noted the next date as 06.03.2019 in the order sheet, which reflects procedural confusion and renders the dismissal unsustainable in law. The learned trial Court also failed to consider the nature of the offence under Section 138 of the Negotiable Instruments Act, the conduct of the accused/respondent in not repaying the cheque amount, and the settled principles laid down by the Hon'ble Supreme Court governing such cases. The findings recorded are perverse, based on improper appreciation of evidence and have resulted in miscarriage of justice; hence, the impugned order deserves to be set aside and the matter adjudicated on merits.
5. On the other hand, learned counsel for the respondent opposes the submissions made by the learned counsel for the applicant and submits that the trial Court after considering all the documents and evidence adduced by the parties has passed the order, in which no interference is called for.



6. I have heard learned counsel for the parties, perused the impugned order and other documents appended with criminal revision.
7. From perusal of the record, it is evident that the complaint under Section 138 of the Negotiable Instruments Act was dismissed by the learned trial Court on 14.02.2019 for want of prosecution. The order sheets further reveal that the case was transferred to the Court of JMFC, Bilaspur on 09.01.2019, and on the said date the formal presence of the complainant was recorded after transfer of the case. Learned counsel for the petitioner/complainant contends that he had mistakenly noted the next date as 06.03.2019 from the order sheet; however, on that very day, the learned trial Court issued aailable warrant and thereafter listed the case on 11.02.2019. It is thus submitted that the subsequent non-appearance of the complainant was neither deliberate nor intentional, but occurred due to bona fide confusion regarding the date of hearing.
8. The record further shows that the trial Court treated the absence of the complainant on subsequent dates as lack of interest and proceeded to dismiss the complaint. However, considering the fact that the complaint pertains to an offence under Section 138 of the N.I. Act, which is quasi-criminal in nature and involves adjudication of liability arising out of a commercial transaction, dismissal of the complaint at a nascent stage without adjudication on merits is a course to be adopted cautiously. The order-sheet dated 09.01.2019 does indicate presence of the complainant through his counsel after transfer of the case, which lends some support to the submission regarding procedural confusion.



9. In these circumstances, this Court is of the view that the dismissal of the complaint for non-prosecution, without affording an effective opportunity and without considering the possibility of removing the confusion regarding the date after transfer, has resulted in failure of justice. The impugned order dated 14.02.2019 therefore deserves to be set aside in the interest of justice, subject to appropriate conditions, and the complaint case is liable to be restored to its original number for decision on merits.
10. Considering the aforesaid facts and circumstances of the case, the instant petition is **allowed**. The impugned order dated 14.02.2019 passed by the learned Judicial Magistrate First Class, Bilaspur (C.G.) in Complaint Case No.764/2017, is hereby quashed and set aside. The complaint case be restored to its original number and both the parties are directed to appear before the trial Court concerned on **2<sup>nd</sup> March, 2026**. The learned Magistrate may thereafter proceed in accordance with law.
11. Registrar (Judicial) is directed to transmit the original record as well as the certified copy of this order to the concerned trial Court within a week from today for necessary information and follow up action.

**Sd/-**  
**(Ramesh Sinha)**  
**Chief Justice**