

HIGH COURT OF CHHATTISGARH, BILASPUR
Order Sheet

CRMP No. 735 of 2015

- Rajkumar Jain S/O Late Shri Komal Chand Jain Aged About 53 Years R/O Behind R.D.A. Complex; Sharda Chowk, Tah. Raipur, Civil And Rev. Distt. Raipur Chhattisgarh.

---- **Petitioner**

Versus

- Shri Ashish Joshi S/O Shri. D.M. Joshi, Acquitted Aged About 35 Years R/O Khamhardih, Shankar Nagar, Kachana Road, Tah. Raipur, Civil And Rev. Distt. Raipur Chhattisgarh.

---- **Respondent**

28-9-2015	Mr. Amiyakant Tiwari, Adv. for applicant/ appellant. Instant CRMP followed by acquittal appeal has been preferred within its limitation. Heard on Cr.M.P. which is an application under sub-section (4) of Section 378 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') against the order of acquittal dated 16-6-2011 passed by the trial Court i.e. Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No. 440/11. On 16-6-2011, the complainant was absent and accused was present along with his counsel. The case was fixed for complainant's evidence. The criminal case was registered and as the complainant was not present for his evidence, even not represented through his counsel, the trial Court on account of non-appearance of the complainant stopped the proceedings, acquitted the accused under sub-section (1) of Section 256 of the Cr.P.C. Learned counsel for the applicant/appellant submits	

	that the acquittal of the accused by the trial Court under sub-section (1) of Section 256 of the Cr.P.C. is an acquittal under Section 255 of the Cr.P.C. Against such acquittal, the complainant/applicant/appellant may prefer an appeal along with leave to appeal as required under sub-section (4) of Section 378 of the Cr.P.C. Hence he prays that special leave to appeal may be granted and the case may be heard on its merit as per provisions of law. For the purpose of leave to appeal, the impugned order passed by the trial Court and other materials i.e. copy of complaint etc. are perused. On due consideration, in the considered opinion of this Court, it is a fit case where leave to appeal may be granted. Consequently, instant CRMP is allowed. Leave to appeal is granted. Registry is directed to register the matter under the head of acquittal appeal. Record of the Court below be requisitioned through usual and fax mode. On appellant's paying process fee within 7 days from today, notice be issued to the respondent through usual and RAD mode returnable within 4 weeks for the purposes of his representation in the matter. List the matter for hearing on motion immediately after service on respondent is complete and record is available. Sd/- Chandra Bhushan Bajpai Judge.	
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