

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 6 of 2018**

- M/s Universal Scientific Through Proprietor Mr. Vikas Chandrakar, S/o Shri Sevan Lal Chandrakar, Aged About 45 Years, 1-2 First Floor, Ekatma Parisar, Rajbandha Maidan, Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

- Ashish Mittal S/o Proprietor/ Authorized Agrawal Pharma Shri G. Mainsan Medicine Market, Alwar Rajsthan , Rajasthan

---- Respondent

For the Appellant	: Mr. Dashrath Kushwaha, Advocate.
For the respondent	:None

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

1-10-2018.

1. This acquittal appeal filed under Section 378(4) of the Cr.P.C., 1973 is directed against the order dated 27-9-2017 passed by the Judicial Magistrate First Class, Raipur, District Raipur(CG) in complaint case No. 582 of 2012, wherein the said Court dismissed the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 for want of prosecution.
2. From perusal of the order sheets, it appears that on 27-9-2017 the case was fixed for appearance of respondent but he did not appear. From the order sheets, it is not clear whether any summon was issued by the trial Court and whether it was served or not or whether the report thereof is awaited. The trial Court should clarify whether the summon is really issued and

whether it was served or not, but the trial Court did not look into the aspect of this matter. Dismissal of the complaint was not only the option before the trial Court and as per Section 256 (1) of the Code of Criminal Procedure, 1973, the trial Court could have adjourned the case for hearing to some other day, but that is not done. The trial Court has not decided the issues between the parties and sent the record to the record room. The parties had filed a complaint for adjudication of the case, but that is not done here, that is why the order passed by the trial Court is not sustainable and the same deserves to be set aside.

3. Accordingly, the appeal is allowed and the order dated 27-9-2017 passed by the trial Court is hereby set aside. Now the case is remanded back to the trial Court for adjudicating the matter afresh. The trial Court is directed to make an effort to serve summon to the respondent and then proceed with the the case as per law and decide the issue between the parties on merit after hearing the parties and after recording the evidence.
4. The appellant shall appear before the trial court on 28-11-2018 for further proceedings.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**

Raju