

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.761 of 2018**

- Gravity Trexim Pvt. Ltd. Through Ku. Kavita Sharma, Director, Gravity Trexim Pvt. Ltd. D/o Shri Shyam Sunder Sharma, Aged About 35 Years, Address- Acholi, Kanhera Road, Urla, Raipur, Chhattisgarh. P. S. Urla, Distt. Raipur, Chhattisgarh.

---- **Petitioner****Versus**

- Sneh Enterprises Through Shri Rajkumar Mishra, Proprietor/ Authorised Signatory, S/o Shri Kuldeep Mishra, Aged About Unknown, Address- Shahid Pan Bhandar, Chaurasia Building, Khursipar Zone 3, Bhilai, Distt. Durg, Chhattisgarh.

---- **Respondent**

 For the petitioner : Shri Shobhit Mishra, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****14.9.2018.**

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. On due consideration, leave is granted.
3. This acquittal appeal has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 against Order dated 12.02.2018 passed by Judicial Magistrate First Class, Raipur in Criminal Case No.1849/2016 wherein the said Court dismissed the complaint of the appellant for non payment of process fee.
4. The case was registered on 24.8.2016 and from the order sheet dated 24.11.2017 it appears that summon was issued to the respondent. From the order sheet of the trial Court it is not clear whether the summon issued on 24.11.17 for appearance of the

respondent on 12.02.2018 was served or not. The trial Court has not verified whether the summon is served or not. If the summon issued on 24.11.2017 was served on the respondent or service of summon is awaited on that date, it was not proper for the trial Court to dismiss the complaint for non payment of process fee. The trial Court should have ascertained the fact whether the summon was issued on 27.11.2017 to serve on the respondent or not. But that was not done. Therefore, the order of the trial Court is not sustainable and the same is hereby set aside.

5. The trial Court is directed to ascertain whether the summon issued on the previous date is served or not or its service is awaited. If the summon is not served then the trial Court may direct for payment of process fee. The appellant shall appear before the trial Court on 02.11.2018 for further proceedings.

6. Accordingly, the petition stands disposed of.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**