

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 91 of 2018**

- Dou Lal Sahu S/o Late Hinchha Ram Sahu Aged About 56 Years Caste- Teli, R/o- Village-Chandanbirahi, Post Chitaud, Police Station and Tahsil- Gurur, District- Balod, Chhattisgarh., District : Balod, Chhattisgarh

---- Appellant**Versus**

- Duman Lal Dahre S/o Late Ramdas Aged About 36 Years Caste- Satnami, R/o- Post- Khapri, Police Station And Tahsil And District- Balod, Chhattisgarh., District : Balod, Chhattisgarh

---- Respondent

For the Appellant	: Mr. B.P. Singh, Advocate.
For the respondent	:None

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****24-09-2018.**

1. This acquittal appeal filed under Section 378(4) of the Cr.P.C., 1973 is directed against the order dated 19-2-2018 passed by the Judicial Magistrate First Class, Balod, District Balod (CG) in complaint case No. 919 of 2017, 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. In the present case, case was registered vide order dated 9-10-2017. and on 29-12-017 notice was issued to the respondent for his appearance before the trial Court on 19-2-

2018 and it was served to the respondent. The case was fixed for appearance of the respondent on 19-2-2018 and on that day the respondent did not appear before the trial Court and the said court dismissed the complaint for want of prosecution. 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. As the respondent has not appeared before the trial Court, his presence before this Court is also not required.

3. In view of this court, all the cases filed before the trial Court should be decided on merit and the case should not be sent to record room without hearing the parties. All the endeavours should be made to decide the issue between the parties on merit after recording the evidence and after evaluating the evidence because every case is filed for hearing on merit, but that is not done and the case was dismissed in a casual manner which is not sustainable and the same deserves to be set aside.
4. Accordingly, the appeal is allowed and the order dated 19-2-2018 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 proceed with the case as per law and decide the issue between the parties on

merit after hearing the parties and after recording the evidence.

5. The appellant shall appear before the trial court on 30-10-2018 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju