

**HIGH COURT OF CHHATTISGARH, BILASPUR****Acquittal Appeal No. 181 of 2018**

- Sharad Sarnaik S/o Narayan Rao Sarnaik Aged About 38 Years R/o- Behind Gurudwara, P.S.- Talibandha, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**---- Appellant****Versus**

- Nasir Khan S/o Shri Jabbar Khan R/o- Vasundhara Vidhya Mandir, Near Ali Kirana Stores, Teli Dharamshala, Ashwini Nagar, Ps- D.D. Nagar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

**---- Respondent**


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For Petitioner : Ms. Rashi Tiwari, Advocate  
 For Respondent : Shri G.D. Vaswani, Advocate  
 Respondent – Nasir Khan is present in person. His presence is marked.

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**Hon'ble Shri Justice Ram Prasanna Sharma**  
**Order on Board**

**23/10/2018**

1. As the respondent -Nasir Khan is present before this Court, order dated 17.9.2018 for warrant of arrest be recalled immediately.
2. The instant Acquittal Appeal is preferred against the order dated 8.11.2017, passed by the Judicial Magistrate First Class, Raipur(CG) in Complaint Case No.900/2016, wherein the said Court has dismissed the complaint for want of prosecution filed under Section 138 of the Negotiable Instruments Act, 1881.
3. The case was registered before the trial Court on 13.4.2016. The respondent was unserved and case was fixed for his appearance.

Dismissal of complaint in absence of the complainant was not the only option before the trial Court. As per Section 256 Cr.P.C., Court can adjourn the case for some other day. It is not clear from the record of the trial Court whether any summon was issued to the respondent and it was served or unserved or its service is still awaited. The trial Court should record in order sheet whether summon is unserved or awaited, but that is not done. Therefore, the order passed by the trial Court is not sustainable and the same deserves to be set-aside.

4. Accordingly, the appeal is allowed and the order dated 08.11.2017 passed by the Judicial Magistrate First Class, Raipur (CG) in Complaint case No.900/2016 is hereby set-aside. Now the matter is remanded back to the trial Court to proceed with the case in accordance with law.

5. Both the parties shall appear before the trial Court for further proceedings on 11<sup>th</sup> December, 2018.

6. Record of the trial Court be sent back immediately.

7. With the above directions, the Acquittal Appeal stands disposed of.

**Sd/**

**(Ram Prasanna Sharma)**

Judge