

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1324 of 2018**

- Jaideep Singh Thakur S/o Late Lallu Singh Thakur, Aged About 30 Years R/o Pandit Dindayal Upadhyay Ward Jagdalpur, District Bastar Chhattisgarh. (Complainant), District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

- Smt. Chandrika Netam W/o Late Santosh Netam Aged About 30 Years R/o Ravindra Nath Taigore Ward No. 12, Near Ramesh Kirana Store Jagdalpur District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For the petitioner	: Mr. Pravin Kumar Tulsyan, Advocate.
For the respondent	: None

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****5-9-2018.**

1. Heard on application for grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973.
2. Admit.
3. It is an acquittal appeal filed by the appellant./complainant against the order dated 8-6-2018 passed by the Judicial Magistrate First Class, Bastar at Jagdalpur in Misc. Criminal Case No. 20 of 2018 whereby the complaint filed by the appellant was dismissed for non-payment of process fee and

the respondent who was acquitted is acquitted from the charge under Section 138 of the Negotiable Instruments Act, 1881. As the respondent is not served before the trial Court, no notice is required to be issued to him for decision of this appeal. As the complaint was filed for the offence as aforementioned on 11-7-2017, summons was issued to respondent in compliance of the order dated 23-3-2018 of the trial Court, but it is not served.

4. Learned counsel for the appellant submits that dismissal of complaint even when the respondent has not appeared before the trial Court is unjust and the trial Court ought to have provided opportunity to the appellant to summon the respondent.
5. Looking to the facts and circumstances that the respondent is yet to appear before the trial Court and the matter was not posted for hearing on merits, this court is of the opinion that opportunity should be provided to the appellant for summoning the respondent.
6. Accordingly, the order dated 8-6-2018 passed by the trial Court is set aside and the case is remanded back to the trial Court for providing opportunity to the appellant to summon the respondent and thereafter for adjudicating the matter on merit afresh after providing opportunity of hearing to both sides.

7. It is directed that the appellant shall appear before the trial Court on 23-10-2018 and the trial Court shall proceed further.

8. In view of the above, the instant petition stands disposed of.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju