

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 269 of 2018**

- Palak Das Manikpuri S/o Shri Manik Das Manikpuri Aged About 31 Years R/o Village Chikhali, Bhoramdev (Chaura), Police Station And Tahsil Bodala, Civil And Revenue District Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Appellant**Versus**

- Sheshmani Mishra S/o Shri Gopal Prasad Mishra Aged About 35 Years R/o Subhash Nagar, Mandi Chouk, Takhatpur, Police Station And Tahsil Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

For the Appellant	: Mr. Paras Mani Shriwas, 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 1-3-2018 passed by the Judicial Magistrate First Class, Kabirdham, District Kabirdham (CG) in Criminal Case No. 351 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, respondent did not appear before the trial Court, therefore, his presence is also not required before this

court. From the order sheets of the trial Court, it appears that non-bailable warrant was issued to the respondent and the case was fixed for his appearance before the trial Court on 1-3-2018. On that day, respondent did not appear before the trial Court and the trial Court dismissed the complaint for want of prosecution in absence of the appellant. Dismissal of the complaint was not only the option before the trial Court. The trial Court could have adjourned the hearing to some other day.

3. In view of this court, all the cases filed before the trial Court should be decided on merit after hearing the parties. The trial Court issued non-bailable warrant to the respondent and he did not appear before the trial court. The trial Court ought to have issued non-bailable warrant again to the respondent for securing his presence to decide the issue between the parties on merit after recording the evidence and after evaluating the evidence, 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 1-3-2018 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