

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1898 of 2018**

- New Maa Danteshwari Traders Chitrakot Road Dharampura Through Its Proprietor Namely Rajeev Panigrahi, S/o Shri Raghunath Panigrahi, Aged About 33 Years, R/o Near Rotary Club Praveer Ward No. 02, Jagdalpur, District Bastar Chhattisgarh

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

- Shri Farsuram Thakur S/o Dhansingh Thakur, R/o Gram Gunpur, P. O. Ghotia, Block /Tehsil Lohandiguda, District- Bastar, Chhattisgarh.

---- **Respondent**

 For the petitioner : Shri Prasoon Agrawal, Advocate
 For the respondent : None

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

1. Heard on IA No.01/2018 for condonation of delay in filing the leave to appeal.
2. For the reasons mentioned in the application delay of 328 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(4) of CrPC.
4. On due consideration, leave is granted.
5. This acquittal appeal has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 against Order dated 18.7.2017 passed by Chief Judicial Magistrate, Bastar at Jagdalpur in Criminal Case No.175/2016 wherein the said Court dismissed the complaint of the appellant for want of prosecution.

6. Learned counsel for the appellant submits that the case was registered by the trial Court and summon was issued to the respondent but it was unserved. On 18.7.2017 the case was not fixed for hearing but it was fixed for report of the service of summon.

7. The respondent had not appeared before the trial Court. The trial Court dismissed the complaint case under Section 256(1) of CrPC, but it was not compulsory for the said Court to dismiss the complaint at once without going for other option. As per the provisions of the said Section, the Magistrate can adjourn the hearing of the case to some other date. The Magistrate is also empowered to dispense with the attendance of the complainant. Therefore, in view of this Court, the Court below should have heard the matter on its merits instead of sending it to record room without deciding the issue between the parties. Accordingly, the order passed by the trial Court is set aside. The trial Court is directed to hear the case after summoning the respondent and then decide the issues between the parties concerned. The appellant shall appear before the trial Court on 30.10.2018.

8. Accordingly, the petition stands disposed of.

Sd/-
(Ram Prasanna Sharma)
JUDGE