

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1926 of 2018**

- Tumandas Sinha S/o. Shri Dayaldas Sinha, aged about 41 years, Proprietor Shri Balaji Fules, R/o. Raipur Road, Dhamtari, Tahsil/District Dhamtari (CG)

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

- Chintamani Yadav, S/o. Shri Heera Yadav, aged about 48 years, R/o. Rudri Basti, Aanand Para, Near Dr. Shatruhan Clinic, Thana Rudri, Dhamtari, Tahsil/District Dhamtari (CG)

---- **Respondent**

 For the petitioner : Shri Samir Singh, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****18.9.2018.**

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. On due consideration, leave is granted.
3. This acquittal appeal has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 against Order dated 17.7.2018 passed by Chief Judicial Magistrate, Dhamtari in Criminal Complaint Case No.1027/2017 wherein the said Court dismissed the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 on the ground of non payment of process fee.
4. The complaint was filed on 29.01.2017 and the case was registered vide order dated 25.10.2017 by the trial Court. The trial Court has not mentioned in the order sheet dated 22.12.2017, 16.3.2018, 09.5.2019 whether any PF is paid or not and if it is

paid whether summon is served or not or whether service is awaited. If the summon is issued by the Court it is the duty of the concerned person who served the summon to the respondent to make report regarding service or non-service. But from the order sheet of the trial Court it is not clear whether any service report is submitted before the trial Court or not.

5. As the respondent is yet to appear before the trial Court he is not required to appear in the present appeal. Looking to the lacuna in the order sheet, the order passed by the trial Court is not sustainable and the same is hereby set aside. The trial Court is directed to record its finding whether any service was issued by the Court earlier and whether any report was submitted or not. The trial Court may provide opportunity of issuance of fresh summon and then proceed in accordance with law to dispose of the matter on its merits. The appellant is directed to appear before the trial Court on 13.11.2018.

6. Accordingly, the petition stands disposed of.

Sd/-
(Ram Prasanna Sharma)
JUDGE