

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 548 of 2019**

Rohinikumar Baiswade, S/o- Gyanchand Baiswade, Aged about- 37 years, R/o- Baniyapara Ratanpur, Police Station Ratanpur, District- Bilaspur (C.G.)
---- Appellant

Versus

Ram Avtar Yadav, S/o- Shri Mithal Lal Yadav, Aged about- 31 years, R/o- Village Semartal, Police Station Koni, Tahsil and District- Bilaspur (C.G.)

Permanant R/o- Village Bartori, Police Station Bilha, District- Bilaspur (C.G.)
---- Respondent

 For Appellant : Mr.Anumesh Shrivastava, Advocate

For Respondent : Mr. Vipin Singh, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****15.10.2019.**

1. Heard on application under Section 378(4) of CrMP for grant of leave to appeal.
2. On due consideration, leave is granted.
3. Admit.
4. This petition is preferred against the order dated 19th November, 2018 passed by Learned Judicial Magistrate First Class, Bilaspur (C.G.) in a Complaint Case No. 1578/2013 wherein the said Court acquitted the respondent for the charge under Section 138 of the Negotiable Instruments Act, 1881 and the case was dismissed for want of prosecution.
5. It appears from the record of the Trial Court that after stating substance of accusation to the respondent recorded evidence as per Section 255 of the CrPC, 1973. Opportunity was provided to the defence side to adduce evidence and the case was fixed for final argument on 5th November, 2018 and 19th November, 2018.

On 19th November, 2018 the trial Court dismissed the complaint by saying that complainant and his counsel are not present in the Court.

6. The question for consideration of this Court is whether the procedure adopted by the trial Court is in the fitness of law of land. As per Section 255 of the CrPC, the Trial Court is not required to hear the argument because if Trial Court finds the respondent guilty, it can convict him and if it finds that accused is not guilty it can record the order of acquittal.
7. It is not the mandate of law that oral or written arguments should be heard in summon case after recording of the evidence. Therefore, trial Court was not right in fixing the date for argument and dismissing the complaint for want of prosecution on the date of argument.
8. The procedure adapted by the Trial Court is not proper therefore, dismissal of the complaint for want of prosecution is liable to be reversed.
9. Accordingly, the appeal is allowed, order of the Trial Court is set a side and Trial Court is directed to proceed with the case as per procedure of the Section 255 of CrPC and pronounce the judgment according to the law.
10. Both parties are directed to appear before the Trial Court for further proceedings on 26th November, 2019.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**