

**(2018) 09 CHH CK 0255**

**Chhattisgarh High Court**

**Case No:** Criminal Misc. Petition No. 1898 Of 2018

New Maa Danteshwari Traders  
Chitrakot Road Dharampura

APPELLANT

Vs

Farsuram Thakur

RESPONDENT

---

**Date of Decision:** Sept. 14, 2018

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 256(1), 378(4)

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Prasoon Agrawal

**Final Decision:** Disposed Of

---

**Judgement**

Ram Prasanna Sharma, J

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.