

**(2018) 09 CHH CK 0445**

**Chhattisgarh High Court**

**Case No:** Acquittal Appeal No. 05 Of 2018

Manmohan Shukla

APPELLANT

Vs

Sahadur Ram Sevta

RESPONDENT

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**Date of Decision:** Sept. 27, 2018

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 256(1), 378(4)
- Negotiable Instruments Act, 1881 - Section 138

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

**Bench:** Single Bench

**Advocate:** DN Prajapati

**Final Decision:** Allowed

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### **Judgement**

Ram Prasanna Sharma, J

1. This appeal has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 against Order dated 22.05.2017 passed by Chief

Judicial Magistrate, North Bastar Kanker (CG) in an unregistered complaint wherein the court below dismissed the complaint for want of prosecution.

2. A complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed by the appellant in which the respondent was not served. From

the order sheet dated 22.5.2017, it is not clear whether any summon was issued or not, whether the summon was served or not or its service is awaited.

3. When the case is at the initial stage, the trial court should have made efforts for service of summon but that was not done. Dismissal of the

complaint was not the only option before the trial Court. As per Section 256(1) of the CrPC, the trial Court can adjourn the hearing of the case to some other date.

4. In view of this Court, all the cases filed for adjudication should not be sent to record room without hearing the parties. Efforts should be made to call

both the parties, adduce evidence and then decide the issues between the parties on merits. Looking to the factual matrix of the case, the order passed

by the trial Court is not sustainable and the same is hereby set aside. The trial Court is directed to proceed with the case according to the law and

after service of summon decide the matter on its merits. The appellant shall appear before the trial Court for further proceedings on 02.11.2018.

5. Consequently, the Acquittal appeal is allowed.