

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Crl.A. No. 3 of 2018

Pradeep Kumar Mauka

.....Appellant/s

- Versus -

Bhoraj Nahata

.... Respondent/s

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

**Order
(Oral)**

04.11.2025

[1] Heard Mr. Serto T. Kom, learned counsel for the appellant. None appeared on behalf of the respondents in spite of service of summon.

[2] As recorded in order dated 19.07.2024 in MC(Crl.A.) No. 2 of 2018, the appellant, who is the complainant in a complaint case under Section 138 of Negotiable Instrument Act before the Court of Chief Judicial Magistrate (CJM), Imphal West, approached this Court for setting aside the order dated 19.01.2017 passed by the Ld. CJM, Imphal West in Complaint Case No. 17 of 2016 whereby the complaint case under Section 138 of N.I. Act was dismissed and accused was discharged under Section 249 of Cr.P.C. for non-appearance of the complainant nor his counsel on that day. The operative part is reproduced as:

“Complainant nor Ld. Counsel is present.

Third and final call made. None cause is shown.

The offence charged in the case is u/s 138 N.I. Act which is a compoundable offence.

Hence with complainant failing to appear and failing to prosecute the case, the accused person is thus discharged and case disposed u/s 249 Cr.P.C.

Announced.

Thus disposed.”

[3] Vide order dated 03.09.2021 passed by this Court in MC(Crl.A.) No. 1 of 2018, the delay of 393 days in preferring the present appeal was condoned by this Court. Further, vide another order dated 19.09.2024 passed in MC(Crl.A. No. 2 of 2019, leave to file appeal against the impugned order dated 19.01.2017 under Section 378(4) of Cr.P.C. was granted by this Court. Accordingly, Crl.A. No. 3 of 2018 is admitted and respondents/accused persons have proceeded ex-parte.

[4] Mr. Serto T Kom, learned counsel for the appellant, draws the attention of this Court that complaint under N.I. Act is a complaint case triable as summon case and not a warrant case. In the impugned order while dismissing the complaint filed by the appellant herein, the same was dismissed under Section 249 of Cr.P.C. treating the same as a warrant case.

[5] It is pointed out that the complaint under N.I. Act is to be proceeded as summon case as provided under Chapter XX of Cr.P.C. and Section 256 of Cr.P.C. provides that when the accused appears and the complainant does not appear without any cause, in such circumstances, the complaint can be dismissed and the accused can be acquitted.

[6] Mr. Serto T Kom, learned counsel for the appellant, refers to the decision of the Hon'ble Supreme Court in the case of **Associated Cement Co. Ltd. vs. Keshvanand reported as (1998) 1 SCC 687** at para Nos. 16 and 17 states that if the appearance of the complainant is required on that day and the matter cannot be adjourned for any other reason, in such circumstances, the complaint case can be dismissed and accused can be acquitted for non-appearance of the complainant. Para Nos. 16 & 17 are reproduced as:

“16. What was the purpose of including a provision like Section 247 in the old code (or section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complaint. An accused who is per force to attend the court on all posting days can be put to much

harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The Section, therefore, affords a protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, court has a duty to acquit the accused in invitum.

17. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

[7] In the present case, learned counsel for the appellant draws the attention of this Court to the various proceedings before the Court of Ld. CJM, Imphal West in Cril.(C) Case No. 17 of 2017. He refers to the order dated 01.12.2016 where the complainant was represented by his counsel and since the respondent/accused did not appear, bailable warrant was issued. Further, in two orders dated 07.01.2017 and 19.01.2019, it has been recorded that the counsel for the appellant/complainant did not appear. On 19.01.2017, the complaint case was disposed of and accused was discharged under Section 249 of Cr.P.C on the ground of absence of the complainant/appellant.

[8] It is submitted that the respondents/accused persons had not appeared before the Court till then and bailable warrant was issued against them for appearance. The object of Section 256 of Cr.P.C. is

that the accused should not be harassed by compelling to appear in all stages where the complainant does not appear without any cause. In order to protect the accused from such circumstances, the Court has been given discretion to dismiss the complaint, where the complainant does not appear when his presence is required and the accused persons are appearing regularly.

[9] It is submitted that in the present case, the accused were yet to appear before the Court and the presence of the complainant/appellant was not strictly required for the purpose of appearance of the accused person. In such circumstances, the dismissal of the complaint and discharged of the accused is not warranted and the same is against the ratio laid down by the Hon'ble Supreme Court in the case of **Associated Cement Co. Ltd. (supra)**.

[10] This Court has perused the materials on record, the provisions of the law and the judgment cited at the bar.

[11] It is admitted fact that the accused/respondents were yet to appear before the Ld. CJM and due to their non-appearance, bailable warrant was issued vide order dated 01.12.2016. Due to unfortunate absence of the complainant or his counsel on two consecutive days i.e. dated 07.01.2017 and 19.01.2017, the complaint case was dismissed and the accused persons were discharged under Section 249 of Cr.P.C.

[12] It may be noted that quoting of wrong provision will not affect the merit of the case and this Court may treat the impugned order as one issued exercising power under Section 256 of Cr.P.C. As held in **Associated Cement Co. Ltd. (supra)**, when accused persons are compelled to appear and the presence of the complainant cannot be exempted, the Court may exercise the discretion under Section 256 of Cr.P.C. for dismissal of the complaint and thereby, acquitting the accused.

[13] In the present case, the requirement of Section 256 Cr.P.C. has not been satisfied, as the accused persons are yet to appear before the Trial Court and the presence of the complainant may not be strictly required for the purpose of the appearance of the

accused persons. In the circumstances and in view of the ratio laid down in **Associated Cement Co. Ltd. (supra)**, the impugned order is set aside and the complaint case is remanded to the Court of Ld. CJM to proceed as per law.

[14] Ld. CJM is directed to restore the complaint case on board and the matter is fixed on 25.11.2025 for further proceeding.

[15] Registry is directed to send a copy of this order to the Ld. CJM, Imphal West for information.

[16] Return the original record.

[17] Appeal is allowed. No cost.

JUDGE

Kh. Joshua Maring

KH.
JOSHUA
MARING

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by KH. JOSHUA
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