

**HIGH COURT OF TRIPURA  
AGARTALA  
Crl. A. No.23 of 2024**

**Mamud Hossen Khadim,**  
Son of Suban Miah Khadim, aged about 44 years,  
Resident of village- Khilpara,  
P.O. & P.S.- R.K. Pur, Udaipur, District-Gomati, Tripura

**.....Appellant(s)**

**Versus**

- 1. Sri Uttam Sarkar,**  
Son of Sri Rasaraj Chandra Sarkar,  
Resident of Tepania Colony High School,  
P.O.-R.K. Pur, Udaipur, P.S.- R.K. Pur,  
District- Gomati, Tripura.
- 2. The State of Tripura.**

**.....Respondent(s)**

|                                         |   |                           |
|-----------------------------------------|---|---------------------------|
| For Appellant(s)                        | : | Mr. Subham Majumder, Adv. |
| For Respondent(s)                       | : | Mr. Raju Datta, P.P.      |
| Date of Hearing &<br>Judgment and Order | : | 10.02.2025                |
| Whether fit for<br>Reporting            | : | NO                        |

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order(Oral)**

This appeal is preferred challenging the order dated 05.07.2024 delivered by Learned J.M. 1<sup>st</sup> Class, Court No.3, Udaipur, Gomati Tripura in connection with case No.CR(NI) 54 of 2021. By the said order Learned Court below has dismissed the case for non-prosecution.

**02.** Heard Learned Counsel, Mr. Subham Majumder appearing for the appellant and also heard Learned P.P., Mr.

R. Datta appearing on behalf of the State-respondent. None appeared on behalf of the private-respondent.

**03.** Taking part in the hearing, Learned Counsel for the appellant drawn the attention of the Court that the present appellant filed one case under Section 138 of N.I. Act which was pending for disposal before the Learned Court below. In the said case, the appellant as complainant produced two witnesses including the complainant himself and the case was posted for examination of the private-respondent-accused under Section 313 of Cr.P.C. On 11.05.2023 the respondent-accused was absent and sought adjournment and the case was adjourned and further date was fixed on 24.05.2023 for examination of accused under Section 313 of Cr.P.C. Again on 24.05.2023 the case was further adjourned fixing the date on 30.06.2023 for examination of the private-respondent under Section 313 of Cr.P.C. But on 30.06.2023 the private-respondent-accused was absent and the case was adjourned to 02.08.2023 for examination of respondent-accused under Section 313 of Cr.P.C. But on 02.08.2023 the respondent-accused again sought for time but the Learned Court below rejected the application for adjournment and issued bailable warrant of arrest against the said private-respondent. On 08.12.2023 the complainant submitted requisite for issuing bailable warrant of arrest against the respondent-accused and the case was fixed for ER/appearance on 24.01.2024. But as there was no execution report of the warrant, so, Learned

Court below issued reminder to the Officer-in-charge of the concerned police station for execution of bailable warrant of arrest but the warrant was not executed and the case was fixed on 05.07.2024 for E/R and on that day the appellant was absent without any step and execution report of the bailable warrant was also not returned back from the concerned police station. But the Learned Court below by order dated 05.07.2024 dismissed the case for non-prosecution which was totally illegal and not warranted by law. So, Learned Counsel for the appellant submitted before the Court to set aside the said order and to remand back the matter to the Learned Court below for completion of trial of the case, otherwise, the appellant would be prejudiced.

He further drawn the attention of the Court referring the provision of Section 256 of Cr.P.C. which provides as under:

**Section 256 of Cr.P.C.:-**

**256. Non-appearance or death of complainant.—(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:**

**Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.**

**(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.**

In addition to that he also referred another citation of Hon'ble Supreme Court of India in **V. K. Bhat vs. G. Ravi Kishore & Anr** dated 29.02.2016 reported in **(2016) 13 SCC 243** wherein in para No.10 Hon'ble the Apex Court observed as under:

**"10. After hearing the learned counsel for the parties, we find that there is some force in the submissions made by the learned counsel appearing for the appellant and we hold, in the facts of the case, that dismissal of the complaint for non-appearance of the complainant amounts to acquittal as contemplated in Section 256 of the Code of Criminal Procedure."**

Referring the same, Learned Counsel for the appellant submitted that the dismissal of complaint for non-appearance amounts to acquittal as contemplated under Section 256 of Cr.P.C. and since in the case at hand that was a private complaint filed by the appellant under the provision of Section 138 of N.I. Act, so, in view of the principle of law laid down by the Hon'ble Apex Court in the aforementioned case, this Court has got the jurisdiction to grant Special Leave to Appeal under Section 378(4) of Cr.P.C.

**04.** On the other hand, Learned P.P. fairly submitted that the order passed by Learned Court below was not in-accordance-with law and he fairly submitted to interfere with the order and to remand back the matter for completion of trial, since the case was pending for examination of the respondent-accused under Section 313 of Cr.P.C.

**05.** This Court has already granted Special Leave to Appeal. I have also heard both the sides at length and perused the relevant copies of orders annexed with the

memo of appeal including the last order dated 05.07.2024. It appears that since the case was posted for examination of the respondent-accused under Section 313 of Cr.P.C. after closure evidence of the complainant and Learned Court below issued bailable warrant of arrest against the accused for his non-appearance. So, till execution of the bailable warrant of arrest issued against the respondent-accused, there was no scope on the part of the Learned Court below to dismiss the case for non-prosecution. Because although the complaint was filed by the appellant, but at that stage it was not mandatory on the part of the complainant to remain present before the Court. Once the warrant could execute and thereafter, the petitioner could remain absent, in that case there was scope on the part of the Learned Court below to pass appropriate order. But here in the given case, since the evidence of the complainant was closed and the case was posted for examination of the respondent-accused under Section 313 of Cr.P.C., so, there was ample scope on the part of the Learned Court below to deliver a judgment after execution of the warrant of arrest, but the Learned Court below without adopting the legal procedure has decided to dismiss the case for non-prosecution which in my considered view was not passed in accordance with law and it appears to this Court that by the said order miscarriage of justice has been caused to the appellant-complainant of this case.

06. Hon'ble the Supreme Court of India in **BLS Infrastructure Limited vs. Rajwant Singh & Ors.** dated 01.03.2023 reported in **(2023) 4 SCC 326** wherein Hon'ble the Apex Court in para No.14 observed as under:

**"14. In Associated Cement Co.: Associated Cement Co. Ltd. v. Vasumathi Chandrasekhar, (2008) 4 SCC 67, the purpose of inserting a provision like Section 256 of the Code was discussed and in light thereof, in para 16, it was observed as under: (SCC p. 693)**

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

**After observing as above, it was held that where the complainant has already been examined as a witness in the case, it would not be appropriate for the Court to pass an order of acquittal merely on non-appearance of the complainant. Thus, the order of acquittal was set aside and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed."**

From the above, it appears that since in this case the appellant-complainant has been examined along with his one witness and the case was posted for examination of accused and due to non-appearance, Learned Trial Court below issued bailable warrant of arrest against him. But as the complainant could not appear on the date fixed for any reason, for that the Learned Court below till execution of the

warrant of arrest of the respondent-accused and after exhausting the processes had no scope to dismiss the case for non-prosecution which in my considered view was not in accordance-with law because the Learned Court below ought to have deliver judgment in this case after examination of the accused under Section 313 of Cr.P.C. and also after hearing argument of the case.

**07.** In view of the above, it appears to this Court that the Learned Court below committed error in dismissing the case for non-prosecution by the said order dated 05.07.2024. At the same time it is also desired that since the complainant has filed the case seeking redress, so, the complainant should remain present on the date of hearing either by appearing before the Court himself or in case of any inconvenience, he may approach to the Court through his engaged Learned Counsel seeking his personal appearance dispensed with.

**08.** In the result, the appeal is allowed. The order dated 05.07.2024 delivered by Learned J.M. 1<sup>st</sup> Class, Court No.3, Udaipur, Gomati Tripura in connection with case No.CR(NI) 54 of 2021 is hereby set aside and the case be restored to its original file by the Learned Court below. The appellant-complainant shall appear before the Learned Court below on 28.02.2025 and on that day the Learned Court below shall accept the attendance of the complainant and thereafter shall take appropriate legal steps to ensure the presence of the respondent-accused in connection with the

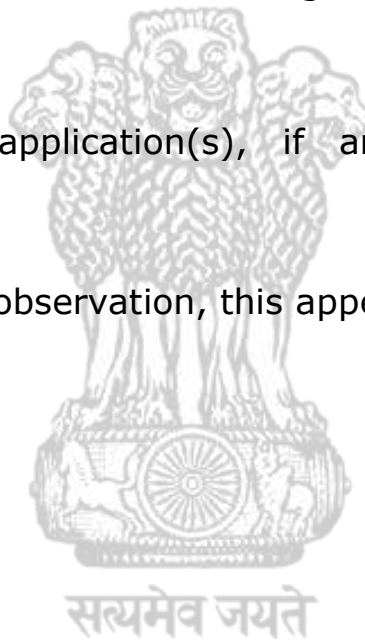
case and after that, Learned Court below shall proceed to dispose of the case as per law.

With this observation the appeal stands disposed of. Send down a copy of this order to the Court of Learned J.M. 1<sup>st</sup> Class, Court No.3, Udaipur, Gomati Tripura in connection with case No.CR(NI) 54 of 2021 under Section 138 of N.I. Act. Also furnish a copy of this order to the Learned Counsel for the appellant-complainant for information and necessary action as ordered.

Send down the LCR along with a copy of the judgment/order.

Pending application(s), if any, is accordingly stands disposed of.

With this observation, this appeal is disposed of.



**JUDGE**

**MOUMITA  
DATTA**

*Purnita*

Digitally signed by  
MOUMITA DATTA  
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