

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 54/2023

CrIM No. 72/2023

Date of pronouncement: 02.02.2026

Date of uploading:

Himanshu Sharma

..... Petitioner(s)/ Appellant(s)

Through: Mr. Harshwardhan Gupta, Advocate

vs

Rajvinder Singh

..... Respondent(s)

Through: None

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER(Oral)

02.02.2026

- 01.** Respondent being continuously absent, present case is taken on board for consideration.
- 02.** Petitioner has invoked inherent jurisdiction of this Court for quashment of order dated 24.08.2022, passed by learned District Judicial Mobile Magistrate (Traffic), Rajouri [“the trial Court”], vide which cognizance came to be taken against him, in a Criminal Complaint; File No.46/comp titled “*Rajvinder Singh Vs. Himanshu Sharma*” and consequent dismissal of the complaint.
- 03.** An overview of the background facts is that respondent preferred a complaint against the petitioner, for offence under Section 500 IPC, in the Court of CJM, Rajouri, which came to be dismissed for non-prosecution on 14.08.2021. The respondent preferred another complaint in the trial Court against the petitioner for the same offence and on same set of facts.

- 04.** Petitioner is aggrieved of the second complaint preferred by the respondent and the impugned cognizance order primarily on the ground that since dismissal of a complaint for non-prosecution on account of non-appearance of the complainant amounts to acquittal subsequent complaint on similar facts and allegations is not maintainable.
- 05.** Heard Mr. Harshwardhan Gupta, learned counsel for the petitioner and perused the file. He has relied upon judgment “*V. K. Bhat Vs. G. Ravi Kishore and Anr.*” 2016(2) R.C.R. (Criminal) 793 to reiterate the grounds urged in memo of petition.
- 06.** Chapter XX Cr.P.C. deals with trial of summons-cases by Magistrates and Section 256 provides consequences of non-appearance on death of the complainant. It reads as below:
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:”*
xxxxxx
xxxxxx”
- 07.** From a bare reading of sub-Section 1 of Section 256 Cr.P.C., it is manifest that dismissal of a complaint on account of non-appearance of complainant amounts to acquittal of the accused. This statutory position has been reiterated and expounded by Hon’ble Supreme Court in **V. K. Bhat (supra)** in the following words:

8. *“After hearing the learned counsel for the parties, we find that there is some force in the submissions made by 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.”

- 08.** In view of the statutory position and settled proposition of law, since dismissal of complaint, for non-appearance of the complainant, amounts to acquittal of accused, subsequent complaint on same set of facts with same allegations and for the same offence shall not be maintainable. The only remedy available to complainant, in such circumstances, is to question the acquittal, by way of acquittal appeal.
- 09.** For the foregoing reasons, impugned order of cognizance is found illegal. Hence, present petition is allowed and impugned complaint titled “*Rajvinder Singh Vs. Himanshu Sharma*”, with all consequential proceedings on the files of learned trial Court shall stand quashed.
- 10. Disposed of** with connected CM(s).
- 11.** Interim direction, if any, shall stand vacated.

(Rajesh Sekhri)
Judge

Jammu
02.02.2026
Riya Kochhar