

1. Heard learned counsel for the applicant and learned A.P.P. for respondents. Perused record. It is stated by the applicant that he is facing the prosecution since 2009 for offence punishable under Sections 7[1] read with Section 2[ia](a), 2[ia] [m] of the Prevention of Food Adulteration Act. According to the learned counsel, the applicant has been attending the trial, but the same is not progressing as the complainant remained absent

on the date fixed for evidence.

2. It is stated that, the applicant filed application for discharge due to absence of the complainant, relying on Section 249 of the Code of the Criminal Procedure, but the Chief Judicial Magistrate rejected the application on the ground that the offence was not compoundable. Referring to the ruling of the Hon'ble Supreme Court as well as this Court, learned counsel submits that, under Section 256 of the Code of Criminal Procedure, when the complainant does not attend, the Court can dismiss the complaint. In this matter also it is a private complaint of the Food Inspector and the procedure of the complaint case is applied. It is stated that, although it is a warrant trial, the principle underlying Section 249 and Section 256 is same and it is submitted that the applicant should have been discharged and the proceedings should have been closed as it is unnecessarily protracted. It is stated that, under Section 249, the accused can be discharged when an offence is compoundable or is not cognizable. In the present matter, the offence is only not compoundable and thus, according to learned counsel, the Court should have discharged the accused.

3. Section 256 in Chapter XX of the Code of Criminal

Procedure deals with summons cases triable by Magistrate. Although Section 256 and Section 249 of the Code of Criminal Procedure, in a way deal with contingency where the complainant is not present, according to me, they operate in different fields. The procedure of summons cases cannot be invoked in warrant trials which relate to more serious offences. Section 249 of the Code of Criminal Procedure reads as under :

“249. Absence of complainant :

When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.”

4. I do not think that the submission of the learned counsel can be accepted that the bar can be applied when the offence is both non-compoundable and non-cognizable. The word “or” cannot be read as “and”. If the matter is not compoundable, discharge cannot follow under Section 249. Similarly, if it is cognizable offence, the discharge cannot follow only because the complainant is absent. Even otherwise, it is a matter of “discretion” of the Magistrate who may, in the facts and circumstances, decline to discharge. There is no substance in the

application. The order of the Chief Judicial Magistrate cannot be faulted with. Criminal Application is rejected.

5. However, looking to the fact that the matter is pending since long, the Chief Judicial Magistrate, Ahmednagar is directed to expedite the hearing of R.T.C. No.3/2009 and to ensure presence of the complainant and see that the matter proceeds.

(A.I.S. CHEEMA, J.)

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