

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.498 OF 1998**

Vamsi Labs Private Limited)
Through its Director – Shri Pratap Reddy)
Age : Adult. Occ.: Business)Appellant/Complainant
R/o. M.I.D.C., 14/15, Chincholi, Solapur)

V/s.

1. Alpine Laboratories)
Proprietor – Shri A.A. Sonandkar)
Age : Adult. Occ.: Business)
R/o. Loyal Pharmaceuticals Pvt. Ltd.,)
C-18, M.I.D.C., Akkalkot Road, Solapur)
2. The State of Maharashtra)Respondents/Accused

Mr. Omkar Nagvekar i/b. Mr. P.R. Arjunwadkar for appellant.
Ms. Anamika Malhotra, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 15th NOVEMBER 2019**

ORAL JUDGMENT :

1 This appeal is filed under Section 378 (4) of the Code of Criminal Procedure impugning an order of acquittal passed on 26th May 1997 by the Judicial Magistrate, First Class. The impugned order reads as under :

Accused is present. Plea of accused is recorded on 18.2.97. Thereafter complainant remained absent on the date of hearing. Today also complainant and its Advocate absent, although repeatedly called till 4 p.m. I don't find application in adjourning the matter further. Hence accused is hereby acquitted for offence punishable U/s. 138 of N.I. Act in view of provisions of Sec. 256 of Cr. P. C. and case is closed.

2 With the assistance of the APP – Ms. Malhotra and Mr. Nagvekar, counsel appearing for appellant, I have perused the appeal

papers.

3 Admittedly in this case, process, i.e., summons, has been issued and even plea has been recorded. Therefore, the judgment of this Court in ***Baliram Ramchandra Patil V/s. Ashok Pundalik Patil***¹ relied upon by the counsel for appellant is not applicable to the facts and circumstances of this case. It is because in that case even process had not been issued.

4 Section 256 of the Code of Criminal Procedure reads as under :

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.

5 The ingredients of Section 256 (1) are (I) summons must have been issued on a complaint, (ii) the Magistrate should be of the opinion that for some reasons, it is proper to adjourn the hearing of the case to some other date, and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned. Section 256(1) mandates the Magistrate to acquit the accused unless for

1. 2017 ALL MR (Cri) 3089

some reason he thinks it proper to adjourn the hearing of the case. If an exceptional course is to be adopted, it must be spelt out. The discretion conferred upon the Magistrate, however, must be exercised with great care and caution. The conduct of the complainant for the said purpose is of immense significance. He cannot allow a case to remain pending for an indefinite period. There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent Court of law as also the provisions of the Code of Criminal Procedure must be construed having regard to the constitutional scheme and the legal principles in mind.

6 In this case, the conduct of the complainant has to be noted. On 18th February 1997, the plea of the accused has been recorded. On the date the impugned order was passed also the accused was present. The complainant remained absent on the date of hearing. The matter was adjourned and on 26th May 1997, when the accused was acquitted, the complainant and its advocate were again absent although repeatedly called till 4.00 p.m. The Magistrate also has noted that there is no application on record to adjourn the matter further. Further the impugned order is dated 26th May 1997. The appeal has been lodged on 10th November 1998, almost 1 ½ years after the order of acquittal. Moreover, there is no explanation even in the appeal as to why the complainant or its pleader did not remain present on 26th May 1997 or the earlier date of hearing as recorded in the

impugned order. Strangely the appellant states that he got knowledge of the impugned order dated 26th May 1997 only on 12th February 1998. One would rightly expect complainant to go on 26th May 1997 itself or the following day to find out what happened or what order was passed in the matter on 26th May 1997. That itself shows how serious the appellant was in prosecuting the complaint. As noted earlier, speedy trial is a fundamental right of an accused.

7 Therefore, if the summons has been issued on complaint and on the date appointed for the appearance of accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, acquit the accused, unless for some reason the Magistrate thinks it proper to adjourn the hearing of the case to some other day. Therefore, Section 256 mandates that if the complainant does not remain present on the appointed day after summons has been issued on complaint and unless attendance of complainant has been dispensed with, the Magistrate shall acquit the accused. If the Magistrate feels that the order of acquittal should not be passed on that date, the Magistrate has to give reasons. In this case, the Magistrate has acquitted the accused as provided under Section 256 because he did not find any reason to adjourn the hearing of the case to some other day. The Magistrate in terms of sub-section (1) of Section 256 exercises wide jurisdiction. Although an order of acquittal is of immense significance, there cannot be any doubt or dispute

whatsoever that the discretion in this case had been properly exercised by the Magistrate. In such a situation, I cannot say there is any illegality in the order that requires this Court's interference.

8 In the circumstances, I have to dismiss the appeal. Appeal dismissed.

(K.R. SHRIRAM, J.)