

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.366 OF 2003**

Shri Champalal Kapoorchand Jain)
having his office at Shaver Service,)
305, Pradeep Mansion, Dr. Babasaheb)
Ambedkar Road, Lalbaug, Mumbai – 400 012)Appellant/Complainant

V/s.

1. M/s. Navyug Cloth Stores)
344/A, Mehta Mansion, Dr. Babasaheb)
Ambedkar Road, Lalbaug, Mumbai – 400 012)
2. Mr. Vijay Kumar Kapoorchand Jain)
Partner of M/s. Navyug Cloth Stores)
3. Mr. Dilip Kumar Kapoorchand Jain)
Partner of M/s. Navyug Cloth Stores)
Both Nos.2 and 3 abovenamed having their)
address at 344/A, Mehta Mansion, Dr.)
Babasaheb Ambedkar Road, Lalbaug,)
Mumbai – 400 012)
4. The State of Maharashtra)Respondents/Accused

Ms. Anamika Malhotra, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 26th 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 3rd June 2000 by the Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai. The impugned order reads as under :

Case for evidence. Complainant and Advocate absent.

Hence, case stands dismissed u/sec.256 of Cr. PC.

Accused stands acquitted.

Bail bonds stands cancelled.

2 With the assistance of the APP – Ms. Malhotra, I have perused the appeal papers.

3 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.

4 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 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.

5 In this case, the appellant in the appeal memo has stated that on several (not all) occasions the complainant and his advocate attended the proceedings before the Trial Court when the matter was adjourned from time to time. The matter, as per the Roznama annexed by the appellant, was listed before the Trial Court on 31 occasions, the 31st occasion was on which the impugned order was passed. Out of these 31 occasions, on 4 occasions the board was discharged. On one occasion the Magistrate was on leave but on 11 occasions the complainant was absent. On 2 occasions though the complainant was present, his advocate was absent. Even today, despite service of notice on the appellant, the appellant is absent. On 3rd September 2019 also the appellant was absent and in the interest of justice, the matter was stood over. The only explanation given in the ground of appeal is that because the Magistrate was on leave on 24th April 2000 and the subsequent dates were given by the judicial clerk and as several parties attending several matters were present in Court seeking information about subsequent dates, there was disturbance in the Court and due to communication gap, the appellant heard the date to be 13th June 2000 instead of 3rd June 2000

and hence, the appellant did not remain present on 3rd June 2000. The appellant does not say when he found out that the complaint was dismissed on 3rd June 2000. The complainant also does not say that he went on 13th June 2000 and made inquiries and realised that the impugned order of 3rd June 2000 was passed. Even the application for certified copy was made only on 5th July 2000. The least the appellant should have done, if one has to believe that he mis-heard the date to be 13th June 2000 instead of 3rd June 2000, was atleast make an averment that he went on 13th June 2000 but realised that the impugned order had been passed on 3rd June 2000. No such statement is made. There is no affidavit in support also of the advocate that he was informed by the appellant that the next date was 13th June 2000 and he went on 13th June 2000 and realised that the impugned order had been passed on 3rd June 2000.

6 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. As noted above, out of the 31 dates, on 11 dates the complainant was absent but still the Magistrate did not dismiss the complaint on those dates. In such a situation, I cannot say there is any illegality in the order that requires this Court's interference.

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

(K.R. SHRIRAM, J.)