

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 52 OF 2003**

The State of Maharashtra
(Through Shri. V.S. Patil,
Food & Drug Administration (M.S.)
E.S.I.S. Hospital, 4th Floor,
Wagle Estate, Thane.)

....Appellant
(Orig. Complainant)

V/s.

1. Rajendra Bhailal Patel (Vendor)
2. Bhailal Purshottam Patel (Proprietor)
of M/s. Shree Pramukh Stores,
Shop No.4, Lezer Point, Merivilla,
Vasai Road, Tal. Vasai, Dist. Thane.

....Respondents
(Orig. Accused)

Mrs. Anamika Malhotra, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATED : 27th NOVEMBER 2020**

ORAL JUDGMENT :

1. This appeal is filed under Section 378 (4) of the Code of Criminal Procedure impugning an order of acquittal passed on 13th March 2002 by the Judicial Magistrate, First Class, Vasai, District Thane. The impugned order reads as under :

Complainant absent since 16/05/98 i.e. from the next date of filing of Complaint. No steps taken. The Complaint is dismissed for want of appearance of the parties i.e. Complainant.

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 herein before 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, according to the appellant no notice issued by the Court was received by them for attending the Court. Hence, the order of dismissal is erroneous. In my view, this is an absolutely baseless ground because if one perused roznama, the complaint came to be filed on or about 16th May, 1998. Thereafter, the matter was listed before the Trial Court on 15/07/1998, 21/12/1998, 16/03/1999, 26/07/1999, 09/12/1999, 22/03/2000, 02/08/2000, 11/09/2000, 08/11/2000, 26/12/2000, 16/04/2001, 13/06/2001, 24/08/2001, 15/12/2001 and 13/03/2002 when the order of dismissal was passed. On none of these dates, the complainant remained present. In fact, accused was present on 8th November, 2000.

6. Learned APP submitted that on 26th December, 2000, the Trial Court directed that notice be issued to complainant but there is no proof that the notice was served on the complainant. There was no explanation as to why even the prosecutor was absent and why the complainant after filing the complaint on 16th May 1998 chose to remain absent till 13th March, 2002 i.e., almost for four years.

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. As noted above, out of the 15 dates, on all 15 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.

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

(K.R. SHRIRAM, J.)