

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 1 of 2023

**Manju Bajaj
versus
The State of West Bengal and others**

For the Appellant : Mr. Manik Lal Poddar.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For the Respondent Nos. 2 & 3 : Mr. Anirban Majumder.

Heard On : 30.03.2023

Judgement On : 30.03.2023

Tirthankar Ghosh, J. :

The learned advocate appearing for the appellant has preferred this appeal against an order of acquittal under Section 256(1) of the Code of Criminal Procedure wherein the learned Metropolitan Magistrate, 11th Court, Calcutta by its order dated 21.05.2022 acquitted the accused persons.

Mr. Anirban Majumder, learned advocate appears for the respondent nos. 2 and 3. The attention of the Court has been drawn by the learned advocate for the respondent nos. 2 and 3 that the complainant by her conduct has waived her right to continue with the trial and there was no illegality in the order passed by the learned Magistrate. In order to substantiate his contention, learned advocate draws the attention of the Court to the order dated 02.12.2021 wherein the complainant was absent. By drawing the attention of the Court to the order dated 07.02.2022, it was pointed out that the complainant was again absent when the accused persons were present and surrendered before the court. Learned Magistrate after waiting till half of the court was over issued show cause notice with a default clause of dismissing the case for default and fixed the next date on 21.05.2022. On 21.05.2022 again neither the complainant appeared nor any show cause was filed on behalf of the complainant in spite of the fact that the accused appeared through his lawyer. Learned advocate submits that in a complaint case, it is the obligation of the complainant to be physically present and in this case, the complainant has by her conduct showed disregard to the proceedings before a court of law and the learned Metropolitan Magistrate, 11th Court, Calcutta had no other option except to dismiss the complaint for default on an assessment of the conduct

and attitude shown by the complainant before a court of law. Learned advocate emphasises that in view of the word 'shall' used in Section 256(1) of the Code of Criminal Procedure, the learned Magistrate adhered to the provisions of law and acquitted the accused persons, any interference at this stage would seriously prejudice the accused/respondents.

Learned advocate appearing for the complainant/appellant submits that the present case was dismissed for miscommunication of the complainant with her learned lawyer. He further submits that the show cause issued by the order dated 07.02.2022 was never received by the complainant or was informed regarding the steps not being taken before the learned Metropolitan Magistrate, 11th Court, Calcutta.

I have perused the order dated 21.05.2022 and I am of the opinion that the learned Magistrate should have recorded a subjective satisfaction pursuant to the show cause being issued to the complainant as to whether the said show cause has been communicated to the complainant so that the answer/reply to the show cause could have been preferred by the complainant.

The provisions of Negotiable Instruments Act were brought into force because of efficacy in banking operation and the complainant in such a case is at par with an injured witness who has suffered for his

cheque being dishonoured. The legislative object of the Act was to incorporate penal laws within an existing law so that the trial of such cases are conducted expeditely and holder in due course of cheque would get his dues within a reasonable period of time. The legislature subsequently incorporated that the trial of such cases be completed within six months.

The instant case was initiated in the year 2020. The process was issued in the year 2021. There is sealed order on 18.05.2021, expectedly during the said period the COVID-19 pandemic was existing and as such, the learned court fixed date on 02.12.2021. On 02.12.2021, learned advocate for the accused appeared and produced the death certificate in respect of one of the accused and an absent petition in respect of two of the accused persons. It is reflected in the order dated 02.12.2021 that the learned Magistrate fixed 07.02.2022 for appearance and death report. The other two accused persons appeared before the court and they were released on bail. However, the order does not reflect regarding any death report being furnished before the court. The learned Magistrate because of absence of the complainant was pleased to issue show cause and on 21.05.2022 was the next date on which the learned Magistrate decided to dismiss the complaint for default under Section 256(1) of the Code of Criminal Procedure and acquitted the accused

persons. The orders of the learned Magistrate also reflect that non-appearance of the complainant did not prejudice the accused in any manner because till 21.05.2022 the death report of the accused was not available before the court as is reflected from the order-sheets. Stage was not ripe even for examination of the accused persons under Section 251 of the Code of Criminal Procedure. Learned Magistrate should have subjectively satisfied himself, as to whether the show cause which was issued, was received by the complainant, who happens to be an injured person/witness.

Having considered the totality of the circumstances that the accused was in no manner prejudiced by the proceedings on the date so fixed, the acquittal so granted requires interference of this Court and is liable to be set aside.

Thus, the order dated 21.05.2022 passed by the learned Metropolitan Magistrate, 11th Court, Calcutta dismissing the complaint for default under Section 256(1) of the Code of Criminal Procedure and acquitting the accused persons as also discharging them from the bail bonds are hereby set aside.

Consequently, the criminal appeal being CRA (SB) 1 of 2023 is allowed.

The complainant is directed to be present before the learned Magistrate on or before 25.04.2023 and pray for issuance of notice for appearance of the accused persons. The learned Magistrate is directed to proceed with the case in accordance with law.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

dc/bpg