

**CRA (SB) 39 of 2024
With
CRAN 1 of 2024**

**TTK PRESTIGE LIMITED
Vs.
The State of West Bengal & Ors.**

Ms. Madhushri Dutta ...for the Appellant

Mr. Malay Kumar Singh
Ms. Soma Roy ...for the Respondents

This appeal has been preferred against an order of acquittal dated 30th November, 2022 by which the court below dismissed the complaint due to non-appearance of the complainant and thereby acquitted the accused.

It is submitted that the complainant lodged a complaint under Section 138 of the Negotiable Instrument Act for dishonour of a cheque amounting to Rs. 7,38,711/- against opposite party herein. It is also submitted that 30th November, 2022 was fixed for filing show cause by the complainant. However, the complainant/appellant was not aware of the date and they were misguided by server copy about fixing of the next date and for which complainant could not take appropriate steps on the date fixed and thereby, the court below was pleased to dismiss the complainant's complaint.

Learned counsel for the respondents submits that the appeal does not lie in the present case and that the appellant was very much aware about the date and as such, the present appeal is not maintainable and liable to be dismissed.

Upon hearing of learned counsels on behalf of both the parties and also considering the grounds shown in the appeal, I find that on the particular day, the appellant was not required to appear physically. Under such circumstances, the court below ought to have at best imposed cost upon the complainant instead of acquitting the accused invoking his jurisdiction under Section 256 of the Code of Criminal Procedure.

The object of Section 256 of the Code of Criminal Procedure is to prevent the complainant from using dilatory tactics to harass the accused. However, such power should not be exercised indiscriminately specially when complainant based his argument about non-appearance due to his ignorance about date allegedly for no fault of his own and specially, when physical appearance of the accused on that particular day was not required. The complainant having the stake in the matter, the court should have adjourned the matter.

Considering the facts and circumstances of the case, the appeal being CRA (SB) 39 of 2024 is allowed. The impugned order of acquittal dated 30th November, 2022 is hereby set aside. The case is ramanded for trial. The court below is directed to make every endeavour for expeditious disposal of the complaint case being no. CC 477 of 2017 and to put his best efforts to conclude the entire proceeding preferably within a period of six months from the date of communication of the order.

Connected application being CRAN 1 of 2024 is also disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)