

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 217 of 2019

Reliance Commercial Finance Limited

Vs.

State of West Bengal & Anr.

For the Appellant : Mr. Satadru Lahiri.

For the State : Mr. Avishek Sinha.

Hearing concluded on : 05.01.2024

Judgment on : 09.01.2024

Shampa Dutt (Paul), J.:

1. This appeal has been preferred against a Judgment and Order dated 30th August, 2018 passed by Learned Metropolitan Magistrate, 16th Court, Calcutta in T.R. Case No. 8148/17 arising out of Complaint Case No. CS/65095/17 under Section 138 of the Negotiable Instruments Act, 1881, thereby acquitting the Accused Person under Section 256(1) of the Code of Criminal Procedure, 1973 from all the charges leveled against him under Section 138 of the Negotiable Instrument Act, 1881.

2. **Mr. Satadru Lahiri was** heard at length on behalf of the appellant.
3. By the order under appeal dated 30.08.2018, the Trial Court held as follows:-

“CS 65095 of 2017

Order dated 30.08.2018

Ld. Advocate for the complainant has filed absent petition on behalf of the complainant.

Complainant is absent on call till 11.45 A.M.

Accused is Rajesh Ram is present with his Ld. Advocate. The accused person submitted that the complainant company has already repossessed the vehicle in question long back and they are not interested to proceed with the matter.

In view of the above submission and that the complainant person is absent today on repeated call, I am of the opinion that the complainant appears not interested to proceed with the case. Complaint's petition is rejected.

Therefore, it is ordered that C Case No. 65095 of 2017 be and same is dismissed and the accused person of the case is acquitted u/s 256 of Cr.P.C. He is also discharged from his bail bonds.

W/A/interim process, if any, stands recalled.

Note in T.R.

D/C by me.

**Sd/-
Metropolitan Magistrate
16th Court, Calcutta”**

4. **Section 256 of the Cr.P.C. lays down:-**

*“Non appearance or death of the 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 contend, 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. It has been held in several decision of this Court that while acquitting an accused under Section 256 of the Code of Criminal Procedure, the Court must apply its judicial discretion and record the findings justifying dismissal of the case. It has been held that the Magistrate cannot pass such an order merely due to non-appearance of the complainant without forming a judicial opinion.

6. Section 256 of the Code mandates that if the complainant does not remain present on the appointed date after the summons have been issued on the prayer of the complainant and unless attendance of the complainant has been dispensed with, **the Magistrate shall acquit the accused. The provision further provides that if the Magistrate feels that the order of acquittal should not be passed on that date, the Magistrate has to give reasons.**

7. As such it is on the Magistrate to give reasons if he feels that the order of acquittal should not be passed. If the complainant does not appear as provided, there is no provision for adjournment, which if allowed has to be, by giving reasons as to why order of acquittal should not be passed on that date in the absence of the complainant.

8. In ***Associated Cement Co. Ltd. vs Keshvanand***, in Criminal Appeal No. 1239 of 1997, on 16 December, 1997, the purpose of inserting a provision like Section 256 of the Code was discussed and in light thereof, in paragraph 16, it was observed by the Supreme Court as under:-

“16. What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary.

The section, therefore, affords protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum.” After observing as above, it was held that where the complainant had already been examined as a witness in the case, it would not be appropriate for the Court to pass an order of acquittal merely on non-appearance of the complainant. Thus, the order of acquittal was set-aside and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed.”

9. In the present case, the learned Magistrate considered the submission of the accused that **the complainant company has already repossessed the vehicle in question** and as the complainant was found absent on

repeated calls, dismissed the case and acquitted the accused under Section 256 of the Cr.P.C.

10. The complainant/appellant has also not appeared before this Court, since filing.

11. As such this Court finds that in the order under appeal, the learned Magistrate had applied his judicial discretion and recorded his findings justifying dismissal of the case and acquitted the accused therein. The learned Magistrate has given specific reasons in support of the requirement under Section 256 Cr.P.C. and thereby dismissed the case and acquitted the accused under Section 256 of the Code of Criminal Procedure.

12. It is also seen that Section 256 of the Code clearly lays down that if the complainant does not appear, the learned 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.**

13. Thus the said provision of Section 256 of the Code of Criminal Procedure clearly **imposes a duty upon the Magistrate to proceed with the provisions of the said Section leading to acquittal of the accused if the complainant is found absent. It has been specifically provided in the said Section that unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.**

14. In the present case, the learned Magistrate did not find any reason to adjourn the hearing of the case to another day.

15. But on the date of dismissal date 30th August 2018 the learned Magistrate did not find any reason, which he thought proper, to adjourn the hearing of the case to some other day (as the Section clearly provides). Learned Magistrate did not adjourn the case on the said date by recording specific reasons and justified his decision in his order relating to the conduct of the complainant on several occasions and proceeded to dismiss the case and finally acquitted the accused persons rightly, complying with the provisions of Section 256 of the Code of Criminal Procedure.

16. Accordingly the order under appeal being in accordance with the provisions under Section 256 of the Code of Criminal Procedure, wherein the learned Magistrate has recorded specific reasons justifying dismissal of the case and also applied judicial discretion to the facts and circumstances of the case before proceeding to acquit the accused persons under Section 256(1) of the Code of Criminal Procedure by dismissing the case.

17. Thus considering the conduct of the appellant/complainant before the Trial Court as also before this Court, this Court is of the view that it seems that the appellant/complainant has lost interest in the appeal as also before the Trial Court and as such this Court finds no reason to interfere with the said order/judgment of acquittal under appeal.

18. The appeal being CRA 217 of 2019 stands dismissed.

19. Lower court records along with a copy of this judgment be sent down at once to the learned Trial Court for information and necessary action, if any.

20. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Shampa Dutt (Paul), J.)