

28.03.2024

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CRA 651 of 2006

In the matter of : Taraknath Sinha.

.... Appellant.

Mr. Arnab Chatterjee, Id. *Amicus Curiae*

... for the appellant

Mr. Madhusudan Sur, Id. A.P.P.

... for the State

The instant appeal has been filed being aggrieved by an order dated 01.04.2006 passed by the learned Judicial Magistrate, 2nd Court, Malda in Case No. 1283 C/04 under Sections 500/120B/34 of the Indian Penal Code acquitting the accused person under Section 256 of the Code of Criminal Procedure.

Heard the submission of the learned *Amicus Curiae* as well as the learned advocate for the State.

It appears with the annexed certified copies of the trial court orders in connection with the aforesaid case that the complainant was present before the court on several dates prior to 01.04.2006. However, on 01.04.2006 'hazira' had been filed on behalf of the complainant, on call the complainant was not found before the Court. On 11.15 A.M. the learned trial court acquitted the accused under Section 256 of the Code of Criminal Procedure.

In the case of **Associated Cement Co. Ltd. -Vs. Keshvanand reported in (1998) Supreme Court Cases 687**. The Apex Court held the following paragraphs as follows:

“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 invitum.

17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. The first is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. The second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the Section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice”.

The provisions under Section 256 of the Code of Criminal Procedure should not be applied without exhausting the means and modes of necessitating the operations of the complainant before the Court.

From the certified copies of the order annexed to the appeal it appeared that the complainant was present on majority of the dates fixed by the trial court. The trial court record did not reveal any evasive attitude on the part of the complainant to deal with the proceedings or not cooperate with the trial court in its adjudication. An abrupt conclusion hastily deciding the case being Case No. 1283 C/04 under Sections 500/120B/34 of the Indian Penal Code in acquittal of the accused should not be accepted or even allowed.

Accordingly, the instant criminal appeal is allowed.

The lower court records be returned to the concerned trial court to conduct the trial of the aforesaid case and conclusively determine the same on proper adjudication.

Copy of the order be sent to the Department as well as learned Trial Court for due compliance.

(Ananya Bandyopadhyay, J.)