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Ct. No. 237

C.R.A.(SB) 68 of 2024
Rahul Gupta
Vs.
Bunty Bagui

Mr. Apurba Kumar Ghosh
Mr. Rudranil Ghosh

...For the Appellant

This appeal has been preferred against the order of acquittal passed by the Trial Court under Section 256(1) of the Cr.P.C. in a proceeding under Section 138 of the Negotiable Instruments Act vide order dated 10th November, 2023.

Affidavit-of-service filed on behalf of the appellant is taken on record. In spite of service, respondent is not represented.

It is submitted on behalf of the appellant that after taking plea the case was fixed on 18th June 2022 for evidence and though complainant was present but the case was adjourned on that date as Presiding Officer is on leave. Thereafter, the matter was further adjourned till 19th October, 2022 when the complainant was present for adducing evidence but accused was found absent and next date was fixed on 03.2.2023. However, on 3rd February, 2023, the complainant could not take any step due to erroneous posting in the diary of the learned Advocate-on-Record of the complainant and no step could be taken also on 10th November, 2023, when the case was dismissed.

He further submitted that the complainant was all along diligent but due to mis-posting in the diary of the concerned Lawyer of the Court below, he could not take step on the date fixed. Moreover, the

order impugned does not speak that the accused was present on that date.

Accordingly, the petitioner submits that the Court below ought to have granted an adjournment and an opportunity ought to have given to the complainant by fixing another date when the matter has already been posted for adducing evidence.

The object of Section 256 Cr.P.C. is to afford a deference against dilatory tactics on the part of the complainant but it does not mean that the Magistrate will take complainant's temporary absence as a short-cut method of disposal of cases.

Here in the present case if complainant's absence caused due to mistake on the part of his Lawyer, complainant should not suffer. The complainant having the stake in the matter, the Court should have adjourned instead, particularly when order sheet shows that on earlier dates complainant attended diligently. While exercising discretion in such cases Magistrate should consider the conduct of the complainant. The accused though were not present on that particular day, but even then he could have been compensated him by imposition of suitable costs.

Having considered the facts and circumstances of the case, I find that this is a fit case where the appeal is to be allowed for the aforesaid reasons and also because the client must not suffer for the alleged laches on the part of his conducting Advocate.

In such view of the matter C.R.A. (SB) 68 of 2024 is allowed. The impugned order dated 10th November, 2023 is hereby set aside. The C.S. Case No. 51896 of 2016 is restored in it's original file.

The Court below is directed to make every endeavour for expeditious disposal of the case, from the stage where it attained last, since the matter is pending for a long time and to make his best effort to conclude the entire proceeding preferably within a period of three months from the date of communication of this order.

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

(Dr. Ajoy Kumar Mukherjee, J.)