

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 470 of 2014**

**Reliance Capital Ltd.**

**-Vs-**

**Sri Sandip Nath**

For the Appellant : Mr. Krishnendu Bhattacharya  
Mr. Priyankar Ganguly  
Ms. Shalini Bairagi  
Ms. Neelanjana Ghorai

For the Opposite Party : Ms. Pallavi Priyadarshee  
(Amicus Curiae)

Heard on : 10.05.2024, 12.08.2024

Judgment on : 08.05.2025

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order dated 02.04.2014 passed by the Learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta in Complaint Case No. C-28368 of 2009 for the offence under Section 139 of the Negotiable Instruments Act, 1882 as amended, whereby the Learned Magistrate dismissed the complaint for default as non-appearance of the complainant's Learned Advocate and acquitted the accused person.
2. The Complainant Company had been incorporated and registered under the Companies Act, 1956 and had been acting as Non-Banking Financial Institution engaged in doing the business of granting loans at all material times. The constituted attorney, Jayanta Mondal, Branch Collection Manager (legal), having his office at 1, Shakespeare Sarani, Air

Conditioned Market, 7<sup>th</sup> Floor, Kolkata-700071 has been duly authorised to represent the company herein.

3. The company had filed the petition of complaint being Complaint Case No. C-28368 of 2009 before the Learned Chief Metropolitan Magistrate, Calcutta as the cheque No. 443517 dated 16.03.2009, drawn on UCO Bank, Uttarpara Branch amounting to Rs.29,728/- was dishonoured at the behest of the accused person. Statutory demand notice was served upon the respondent but he did not pay back the said existing liability accrued out of loan agreement entered into by and between the complainant and the accused person.
4. Consequently, the said case was transferred before the Learned Metropolitan Magistrate, 6<sup>th</sup> Court for trial and disposal. Upon satisfaction of solemn affirmation under affidavit, the Learned Magistrate issued process. In the lead of receipt of summons, the accused person had appeared and released on bail. Plea was duly recorded, to which the accused pleaded not guilty and claimed to be tried and the following dates were issued:-

| <u>Date</u>       | : | <u>Incident</u>                                       |
|-------------------|---|-------------------------------------------------------|
| 21.08.2009        | : | For Service Return                                    |
| 21.01.2010        | : | For Service Return                                    |
| 28.05.2010        | : | For Service Return                                    |
| 02.07.2011        | : | Appearance                                            |
| 04.11.2011        | : | E/R ID NBW                                            |
| 03.08.2013        | : | Absence of complainant – show cause was issued        |
| 11.11.2013<br>not | : | Resolution adopted by Learned Advocates for<br>attend |

02.04.2014 : Due to absence of Learned Advocate for the complainant, complaint case was dismissed for default

5. The petitioner/complainant had a communication gap with his Learned Advocate and neither the complainant nor his Learned Advocate took any steps on the subsequent date i.e. on 02.04.2014 and the Learned Court dismissed the instant complaint and acquitted the accused person although the Learned Court did not give further chance for filing the show cause by the petitioner and passed the order of dismissal of complaint without considering the provisions of the Section 256 Cr.P.C.
6. The petitioner stated that he had no intentional laches or ill-purpose to avoid the Court. The case was filed way back in 2009, the accused appeared in 2012 but the complainant regularly took steps hence the Learned Court could have dispensed the personal attendance of the complainant but hastily without applying judicial mind dismissed the instant complaint.
7. The petitioner further stated that the Learned Court should have used the power conferred upon by the statute with equanimity and in absence of complainant could not have dismissed the complaint in a routine manner . The real test should have been good faith, not to be used for merely disposing the case. The Learned Court ought to have considered previous date mentioned a resolution for “not to attend” hence there had been an inadvertent communication gap between the company and the Learned Advocate.
8. The petitioner stated that the Learned Court should have considered that when the date was fixed for show-cause and not for hearing, dismissal of the complaint for non-appearance was manifest error.

9. The petitioner further stated and submitted that when he had all along taken steps for five long years but on a particular date due to some inadvertent mistake neither he nor his counsel could appear, the order of dismissal of complaint was wholly illegal and such act on the part of the Learned Court tantamount to gross miscarriage of justice.

10. The order dated 21.08.2009 passed by the Metropolitan Magistrate, 6<sup>th</sup> Court at Calcutta in Complaint Case No. C-28368/2009 is replicated as follows:-

*“Complainant Vinay Singh present files one affidavit restating the statements made in writing complaint. Same is tendered as his examination u/s. 200, Cr.P.C. in view of provision contained in section 145, N. I. Act.*

*Considering the statement of complainant on S. A. and the documents Xerox copy of which have been filed, I am of the opinion that there is sufficient ground for proceeding against accused person for commission of offence punishable U/s. 138, N. I. Act.*

*Issue summons upon the accused person.*

*Complainant is permitted to cause service of summon upon accused person by Regd. Post with A/D as prayed.*

*Complainant to put in requisite at once.*

*To 21.01.2010 for S/R and appearance.”*

11. The order dated 02.04.2014 passed by the Metropolitan Magistrate, 6<sup>th</sup> Court at Calcutta in Complaint Case No. C-28368/2009 is replicated as follows:-

*“Today is fixed for showing cause by the complainant.*

*Complainant is found absent on repeated calls. None appears for the complainant. It is now 12:00 p.m. No reply to show cause has been filed by the complainant.*

*Perused the materials on record.*

*Considering the facts and circumstances of the case, it appears before me that this is a case U/s.-138 of the N. I. Act and the offence is triable as*

*summons case. I also do not find any reason to adjourn hearing of the present case to some other day as the complainant has already got sufficient opportunity and the complainant is reluctant to proceed with the case.*

*Therefore, I find no alternative but to dispose of the present case U/s.-256(1) of the Cr.P.C.*

*Hence, it is*

#### **ORDERED**

*That the accused is hereby acquitted U/s-256(1) Cr.P.C. He is also released from his bail bond if any. Thus the present case is hereby disposed of for non-prosecution.”*

12. Section 256 of the Code of Criminal Procedure deals with the consequences of the non-appearance of the complainant in a summons case. If the complainant in a summon case does not appear on the date fixed for the accused's appearance or any subsequent date to which the case is adjourned, the Magistrate may acquit the accused.
13. In the instant case, the complainant appeared before the Court and he was examined under Section 200 of the Code of Criminal Procedure vide order dated 21.08.2009 as aforesaid.
14. The Learned Magistrate can dispense with the complainant's attendance and proceed with the case if the complainant is represented by a Learned Advocate or if the same believed the complainant's personal presence is not necessary.
15. In the instant case, the accused did not appear before the Court on several occasions. If at all the complainant did not appear or had been absent on a date specifically set for the appearance of the accused, the acquittal of the accused could have been justified. The absence of non-appearance of a complainant will not always result in the acquittal of the accused. In the order impugned, the Learned Magistrate did not mention

as to whether the accused was present or not. However, there was a lapse on the part of the complainant to file show-cause for non-appearance on the earlier occasion on which the accused too was absent.

16. The complainant was, however, represented by a Learned Advocate a “last chance” for filing show-cause could have been granted. Moreover, in absence of both the parties stringent order ensuring the presence of both the parties must have been directed, more so, when the accused person was on bail.

17. The Learned Magistrate should not have hastily disposed of the complaint case through acquittal of the accused.

18. Under such circumstances, the instant appeal being CRA 470 of 2014 is allowed and the order of the Learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta in Complaint Case No. C-28368 of 2009 is set aside. Necessary steps be taken by the Learned Magistrate in ensuring presence of both the parties before the Learned Magistrate on the next date of hearing and conclude the proceedings expeditiously without granting any adjournment to either of the parties.

19. Accordingly, the instant criminal appeal being CRA 470 of 2014 stands disposed of.

20. There is no order as to costs.

21. I record my appreciation for the able assistance rendered by Ms. Pallavi Priyadarshee, Learned *Amicus Curiae* representing the opposite party in disposing of this appeal.

22. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

**(Ananya Bandyopadhyay, J.)**