

91.
21.02.2025
Bd.

CRA (SB) 194 of 2024

**M/s. Kotak Mahindra Prime Limited
Vs.
Koncepts & Kreations & Anr.**

**Mr.Dwaipayan Banerjee
Mr. Archita Roy Chowdhury
Mr. Abir Das ...for the Appellant.**

Affidavit of service filed by the petitioner/appellant is taken on record.

This appeal has been preferred against a judgment of acquittal passed by the court below under section 256(1) of the Code of Criminal Procedure dated 09.09.2024 on the ground of default.

Mr. Banerjee, learned counsel for the appellant submits that while learned counsel in the court below was busy in another court, he could not take steps on 19th February, 2024 when the matter was taken up for hearing and for which the Court below asked the complainant to file show-cause on 27th June, 2024 and it is further submitted that learned court below without considering the cause shown by the complainant, has arbitrarily dismissed the complaint on the ground that complainant was not found on call.

The word “does not appear” in section 256 Cr.P.C. no doubt gives the Magistrate power to acquit accused, unless there is proper reason for adjourning the hearing of the Case. Though sub-section (1) of 256 used the word “shall acquit” in the case of

non-appearance of the complainant, but this mandatory provision arises only when, Magistrate has exercised his discretion properly. In fact if the presence of the complainant on the particular day may not be necessary, as it happened in the present case, it is not a sound exercise of judicial discretion of the Court to dismiss the case and acquit the accused without considering whether the presence of the complainant is necessary or not.

The weighty consideration in such cases is that unless it was obligatory on the part of the complainant to physically present on the court, the criminal proceeding should not be dismissed on the ground of default or on the ground of laches, if any, on the part of conducting lawyer. The criminal proceeding should be disposed of as far as possible on merit and in the present circumstances the court below ought to have imposed appropriate cost upon the petitioner/appellant, instead of acquitting the accused persons from the proceeding.

In such view of the matter, the appeal being CRA (SB) 194 of 2024 is allowed.

The order impugned dated 09.09.2024 passed in CS /19208/22 by which the court below has acquitted the petitioner/appellant is hereby quashed.

Learned court below is directed to expedite the hearing of the criminal proceeding and to make every endeavour for disposal of the entire proceeding as expeditiously as possible preferably

within a period of six months from the date of communication of this order.

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.)