

a
b
c

ABC 2020 (I) 1 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY

(K.R.Shriram, J.)

Criminal Appeal No. 498 of 1998

Decided on 15 November 2019

b
c

VAMSI LABS PRIVATE LIMITED

- Appellant(s).

Versus

c
d

ALPINE LABORATORIES & ANR.

- Respondent(s).

c
d

Law Covered:- (A) Code of Criminal Procedure, 1973 – Sections 256 & 378(4) – Negotiable Instruments Act, 1881 – Section 138 – Appeal against acquittal – Non- appearance or death of complainant – Held, Magistrate did not find any reason to adjourn the hearing of the case to some other day– accused was rightly acquitted –the discretion had been properly exercised by the Magistrate – Appeal dismissed. (Para 7)

e
f

(B) Code of Criminal Procedure, 1973 – Section 256 – Non- appearance or death of complainant – Acquittal of the accused – Essential ingredients – (i) summons must have been issued on a complaint – (ii) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date – (iii) the date on which the order u/s 256(1) can be passed is the day appointed for appearance of the accused – or any day subsequent thereto, to which the hearing of the case has been adjourned. (Para 5)

g

(C) Code of Criminal Procedure, 1973 – Section 256(1) – Power of the Magistrate under – the section mandates the Magistrate to acquit the accused – unless for some reason he thinks it proper to adjourn the hearing of the case. (Para 5)

h

(D) Code of Criminal Procedure, 1973 – Section 256(1) – Non- appearance or death of complainant – Acquitting the accused – Adopting any other course by Magistrate – If an exceptional course is to be adopted, it must be spelt out. (Para 5)

(E) Code of Criminal Procedure, 1973 – Section 256 – Non- appearance or death of complainant – Essential criteria – conduct of the complainant – is of immense significance – He cannot allow a case to remain pending for an indefinite period – Speedy trial is a fundamental right of an accused. (Para 5)

(F) *Construction of law – The orders passed by the competent Court of law & the provisions of the CrPC must be construed having regard to the constitutional scheme & the legal principles in mind. (Para 5)* a

(G) *Code of Criminal Procedure, 1973 – Section 256 – Non-appearance or death of complainant – Acquittal by Magistrate – Conduct of the complainant – remained absent on the date of hearing – when the accused was acquitted, the complainant & its advocate were again absent although repeatedly called – no application to adjourn the matter further – Delay in appeal – appeal was lodged almost 1 1/2 years after the order of acquittal – Non-explanation regarding absence even in the appeal – non-serious complainant – speedy trial is a fundamental right of an accused – Acquittal justified. (Para 6)* b c

(H) *Code of Criminal Procedure, 1973 – Section 256 – Non-appearance of complainant – Conduct of complainant – One would rightly expect complainant to go on the same day or the following day to find out what happened or what order was passed in his matter – long delay on the part of complainant – Held, shows how serious the appellant was in prosecuting the complaint. (Para 6)* d

(I) *Code of Criminal Procedure, 1973 – Section 256 – Non-appearance of complainant – Scope – if the complainant does not remain present on the appointed day after summons has been issued on complaint – & unless attendance of complainant has been dispensed with – the Magistrate shall acquit the accused. (Para 7)* e

(J) *Code of Criminal Procedure, 1973 – Section 256 – Non-appearance of complainant – No-passing of acquittal order – Duty of the Magistrate – If the Magistrate feels that the order of acquittal should not be passed on that date, the Magistrate has to give reasons. (Para 7)* f

Facts:- *The present appeal was is filed u/s Section 378(4), CrPC impugning an order of acquittal passed the JMFC, since the complainant remained absent on the date of hearing. The accused was acquitted for offence punishable u/s. 138 of N.I. Act in view of provisions of Sec. 256 of Cr. P. C. and case was closed. The order of acquittal was upheld by the honorable Bombay High Court.* g h

Law of relief:- *A complainant cannot allow a case to remain pending for an indefinite period.*

Held:- *The ingredients of Section 256 (1) are (I) summons must have been issued on a complaint, (ii) the Magistrate should be*

a of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date, and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned. Section 256(1) mandates the Magistrate to acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case. If an exceptional course is to be adopted, it must be spelt out. The discretion conferred upon the Magistrate, however, must be exercised with great care and caution. The conduct of the complainant for the said purpose is of immense significance. He cannot allow a case to remain pending for an indefinite period. There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent Court of law as also the provisions of the Code of Criminal Procedure must be construed having regard to the constitutional scheme and the legal principles in mind. (Para-5)

e In this case, the conduct of the complainant has to be noted. On 18th February 1997, the plea of the accused has been recorded. On the date the impugned order was passed also the accused was present. The complainant remained absent on the date of hearing. The matter was adjourned and on 26th May 1997, when the accused was acquitted, the complainant and its advocate were again absent although repeatedly called till 4.00 p.m. The Magistrate also has noted that there is no application on record to adjourn the matter further. Further the impugned order is dated 26th May 1997. The appeal has been lodged on 10th November 1998, almost 1 1/2 years after the order of acquittal. Moreover, there is no explanation even in the appeal as to why the complainant or its pleader did not remain present on 26th May 1997 or the earlier date of hearing as recorded in the impugned order. Strangely the appellant states that he got knowledge of the impugned order dated 26th May 1997 only on 12th February 1998. One would rightly expect complainant to go on 26th May 1997 itself or the following day to find out what happened or what order was passed in the matter on 26th May 1997. That itself shows how serious the appellant was in prosecuting the complaint. As noted earlier, speedy trial is a fundamental right of an accused. (Para-6)

h Therefore, if the summons has been issued on complaint and on the date appointed for the appearance of accused or any day subsequent thereto to which the hearing may be adjourned, the

complainant does not appear, the Magistrate shall, acquit the accused, unless for some reason the Magistrate thinks it proper to adjourn the hearing of the case to some other day. Therefore, Section 256 mandates that if the complainant does not remain present on the appointed day after summons has been issued on complaint and unless attendance of complainant has been dispensed with, the Magistrate shall acquit the accused. If the Magistrate feels that the order of acquittal should not be passed on that date, the Magistrate has to give reasons. In this case, the Magistrate has acquitted the accused as provided under Section 256 because he did not find any reason to adjourn the hearing of the case to some other day. The Magistrate in terms of subsection (1) of Section 256 exercises wide jurisdiction. Although an order of acquittal is of immense significance, there cannot be any doubt or dispute whatsoever that the discretion in this case had been properly exercised by the Magistrate. In such a situation, I cannot say there is any illegality in the order that requires this Court's interference. (Para-7)

Counsel:- For Appellant(s): Mr. Omkar Nagvekar, Mr. P.R. Arjunwadkar, Advs.

For Respondent(s): Ms. Anamika Malhotra, Adv.

Cases Referred:-

Baliram Ramchandra Patil V/s. Ashok Pundalik Patil, 2017 ALL MR (Cri) 3089, (Para-3)

JUDGMENT

K.R.SHRIRAM, J.: - 1. This appeal is filed under Section 378 (4) of the Code of Criminal Procedure impugning an order of acquittal passed on 26th May 1997 by the Judicial Magistrate, First Class. The impugned order reads as under :

Accused is present. Plea of accused is recorded on 18.2.97. Thereafter complainant remained absent on the date of hearing. Today also complainant and its Advocate absent, although repeatedly called till 4 p.m. I don't find application in adjourning the matter further. Hence accused is hereby acquitted for offence punishable U/s. 138 of N.I. Act in view of provisions of Sec. 256 of Cr. P. C. and case is closed.

2. With the assistance of the APP - Ms. Malhotra and Mr. Nagvekar, counsel appearing for appellant, I have perused the appeal papers.

3. Admittedly in this case, process, i.e., summons, has been issued and even plea has been recorded. Therefore, the judgment of

January 2020

a this Court in *Baliram Ramchandra Patil V/s. Ashok Pundalik Patil, 2017 ALL MR (Cri) 3089* relied upon by the counsel for appellant is not applicable to the facts and circumstances of this case. It is because in that case even process had not been issued.

b 4. Section 256 of the Code of Criminal Procedure reads as under :

b 256. *Non- appearance or death of complainant.*

c (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 contained, 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*
d *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.*

e (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.*

f 5. The ingredients of Section 256 (1) are (i) summons must have been issued on a complaint, (ii) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date, and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned. Section 256(1) mandates
g the Magistrate to acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case. If an exceptional course is to be adopted, it must be spelt out. The discretion conferred upon the Magistrate, however, must be exercised with great care and caution. The conduct of the complainant for the said purpose is of immense
h significance. He cannot allow a case to remain pending for an indefinite period. There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent Court of law as also the provisions of the Code of Criminal Procedure must be construed having regard to the constitutional scheme and the legal principles in mind.

6. In this case, the conduct of the complainant has to be noted. On 18th February 1997, the plea of the accused has been recorded. On the date the impugned order was passed also the accused was present. The complainant remained absent on the date of hearing. The matter was adjourned and on 26th May 1997, when the accused was acquitted, the complainant and its advocate were again absent although repeatedly called till 4.00 p.m. The Magistrate also has noted that there is no application on record to adjourn the matter further. Further the impugned order is dated 26th May 1997. The appeal has been lodged on 10th November 1998, almost 1 1/2 years after the order of acquittal. Moreover, there is no explanation even in the appeal as to why the complainant or its pleader did not remain present on 26th May 1997 or the earlier date of hearing as recorded in the impugned order. Strangely the appellant states that he got knowledge of the impugned order dated 26th May 1997 only on 12th February 1998. One would rightly expect complainant to go on 26th May 1997 itself or the following day to find out what happened or what order was passed in the matter on 26th May 1997. That itself shows how serious the appellant was in prosecuting the complaint. As noted earlier, speedy trial is a fundamental right of an accused.

7. Therefore, if the summons has been issued on complaint and on the date appointed for the appearance of accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, acquit the accused, unless for some reason the Magistrate thinks it proper to adjourn the hearing of the case to some other day. Therefore, Section 256 mandates that if the complainant does not remain present on the appointed day after summons has been issued on complaint and unless attendance of complainant has been dispensed with, the Magistrate shall acquit the accused. If the Magistrate feels that the order of acquittal should not be passed on that date, the Magistrate has to give reasons. In this case, the Magistrate has acquitted the accused as provided under Section 256 because he did not find any reason to adjourn the hearing of the case to some other day. The Magistrate in terms of subsection (1) of Section 256 exercises wide jurisdiction. Although an order of acquittal is of immense significance, there cannot be any doubt or dispute whatsoever that the discretion in this case had been properly exercised by the Magistrate. In such a situation, I cannot say there is any illegality in the order that requires this Court's interference.

8. In the circumstances, I have to dismiss the appeal. Appeal dismissed.

a **Result:-** Appeal dismissed.

ABC 2020 (I) 7 BOM
ACQUITTAL & BAIL CASES
b **HIGH COURT OF BOMBAY**

(K.R.Shriram, J.)

Criminal Appeal No. 388 of 1999

Decided on 15 November, 2019

c **SHANTARAM NAMDEO SATHE** - Appellant(s).

Versus

STATE OF MAHARASHTRA & ANR - Respondent(s).

d **Law Covered:-** (A) Code of Criminal Procedure, 1973 –
Sections 256 & 378(4) – Negotiable Instruments Act, 1881 –
Section 138 – Appeal against acquittal – Date of issue of cheque
– different dates given by complainant – complainant is totally
unreliable and considering the complainant's evidence, the stand of
the accused/respondent seems to be more plausible – Acquittal
e upheld. (Para 6 & 9)

(B) Negotiable Instruments Act, 1881 – Section 138 – Date
of issue of cheque – disputed regarding – Held, cheque was issued in
February 1996 & not on 23rd May 1997 (as claimed by complainant)
f because the transaction, for which payment was made, was of
February 1996. (Para 6)

(C) Negotiable Instruments Act, 1881 – Section 138 – Stop
payment – stop payment instructions was issued about eight
months prior to the date of issue alleged by the complainant – Held,
g then the dishonoured cheque would have been with the accused – In
such a case, the accused giving stop payment instructions prior to
issuance would not arise – not the case of the complainant that the
accused issued a post dated cheque – Acquittal upheld. (Para 6)

h (D) Negotiable Instruments Act, 1881 – Section 138 –
Receipt of part payment in case by the complainant – did not issue
any receipt – this fact was not mentioned in the complaint &
examination in chief – Assumption by Court – Held, why could the
Court not assume that similarly he would have received remaining
amount in cash but chose not to give the receipt. (Para 7)