
(1999) 02 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Acquittal Appeal 34 of 1998

Saraswati Hire-Purchase Co.

APPELLANT

Vs

Vipan Gupta

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 247, 256
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1999) CriLJ 3816 : (1999) 4 RCR(Criminal) 492

Hon'ble Judges : M.Y. Kawoosa, J

Bench : Single Bench

Advocate : Achal Sethi, for the Appellant; S. Sangra, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Kawoosa, J.—This acquittal appeal against the order of Sub-Registrar, Jammu, dated 28th May, 1998 passed in file No. 78 with the permission of this Court dated 16th Sept., 1998 has been admitted to hearing.

2. This appeal emanates from the criminal complaint filed u/s 138 of Negotiable Instruments Act against the respondent on 29th December, 1996.

Parties were summoned. Accused-respondent filed an application for dropping of the proceedings. Petitioner filed his objections. Application was

heard finally on 3rd Jan., 1998 and was posted for the Judgment. Thereafter nobody appeared from 25th March, 1998 onwards. It appears from

the interim order that the presiding officer was transferred. Finally the complaint was taken up for 28th May, 1998. Complainant was again absent.

This order does not show as to whether the accused was present or not. However, the complaint was dismissed for non-prosecution and the

accused was acquitted. Complainant-petitioner has come up with this appeal

stating therein that when the case was heard regarding the application for dropping of the proceedings, an open date was given to the complainant, so he could not appear on a particular date.

3. The Court has dealt with the case u/s 247, Cr.P.C. The learned counsel for the appellant has taken me through this section and has contended

that the Court could not have dismissed the complaint and acquitted the accused merely for the complainant being absent on that date. The learned

counsel for the other side has contended that it was duty of the complainant to find out the date of hearing and to be present on that date failing

which Magistrate was within his bounds to acquit the accused and to dismiss the complaint. He has relied on State of Kerala Vs. Thomma

Kochuthoma and Others, . The contention of other side that the complainant could have himself found out the date of hearing is not tenable. Here

in this case the Kerala Authority (supra) which is cited I have gone through. It is not applicable in the present case. The Kerala Authority is

regarding that the complainant had not presented himself but had written letter to the Magistrate asking for a date. Court held that the complainant

could not have written a letter to the Magistrate, he should have taken pains in going to the Court and finding out the date. Here in the present case

it is urged that the Magistrate has not exercised the discretion judicially. There was good reason for adjourning the case, so the accused could not

have been acquitted. Secondly, personal attendance of the complainant was not necessary on that date, for this reason also his presence could

have been dispensed with and further proceedings could have been taken in the case.

4. Heard learned counsel for the parties. To appreciate the arguments advanced in this behalf by the learned counsel for the parties, it would be

feasible to quote Section 247, Cr.P.C. under which the case has been dealt with by the learned Magistrate :-

Section 247. Non-appearance of complainant - If the summons has been issued on complaint and upon 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 proper to adjourn the hearing of the case to

some other day :

(Provided that 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.)

5. I have given my thoughtful consideration to the arguments advanced before me. Bare reading of the section itself obviously reveals that the

Magistrate is empowered to acquit the accused unless for some reasons he thinks proper to adjourn the hearing of the case to some other date.

This also is subject to a proviso in which it is stated where the Magistrate is of opinion that personal attendance of the complainant is not necessary

Magistrate may dispense with his attendance and proceed with the case. It is crystal clear from the Section 247 that the power of Magistrate to

acquit the accused under this section is not unlimited but is bracketed and subjected to certain limitations. He can acquit the accused only if there is

no valid reason to adjourn the case. Secondly, this power is also subject to the opinion of the Magistrate whether personal attendance of

complainant is necessary or not. If the Magistrate feels that the personal attendance of the complainant is not necessary, he can dispense with his

personal appearance for such hearing. Now we have to see what was proper for the learned Sub-Registrar to do in the given circumstances of the

case. It is admitted that the case was for announcement of the Judgment regarding the application for dropping of proceedings. Ordinarily presence

of the complainant was not necessary. His presence could have easily been dispensed with. Secondly there was a valid reason for adjourning the

case. Magistrate could have announced the order already reserved or if new incumbent had taken the charge he could have directed the learned

counsel for the parties to argue the application afresh. There was no occasion in such circumstances to acquit the accused either way in the

absence of complainant when the accused also was not present on that date. Learned Sub-Registrar had either to announce the Judgment

regarding the application for, dropping of proceedings. In that case the presence of complainant was not necessary so, the case could have easily

been adjourned, or in the alternative if he wanted to hear the arguments afresh, he could have adjourned the case and asked the learned counsel

for the parties to argue afresh and could have dispensed with the presence of

complainant on that date. So it is manifestly clear that Sub-Registrar has not exercised discretion judicially. The exercise of discretion by him in the circumstances of the given case appears to have been arbitrary.

6. This view is fully supported by Associated Cement Co. Ltd. Vs. Keshvanand, . Apex Court also held that the aforementioned two constraints

are imposed on the court for exercising the power u/s 256 which is pari materia to Section 247 of Jammu and Kashmir Cr.P.C. First is to see

whether situation justifies the adjournment in the case. If the situation does not justify the adjournment, Court is free to dismiss the complaint and

acquit the accused. Secondly, in that case also if the presence of complainant on that date is not necessary, Court can dispense with the presence

of complainant and proceed further. Thus the discretion given to the Court is to be exercised judicially and fairly without impairing the cause of

administration of criminal justice.

7. For the above reasons, therefore, the appeal is allowed and the Judgment impugned is set aside. Parties are directed to appear before the trial

Court on 22nd Feb., 1999.