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Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 742/2025

ABDUL RAZZAK BEIGH Petitioner(s)
Through: Mr. Taha Khaleel, Adv.

V/s

ALTAF AHMAD KHAN Respondent(s)
Through:

Coram:
Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER
21.07.2026

1. Heard and considered.
2. The issue that has arisen in this case for determination is as to whether a petition under Section 528 of BNSS against an order which has resulted in dismissal of complaint is maintainable.
3. Section 279 of BNSS which falls in Chapter XXI provides for consequence of non-appearance or death of complainant. As per this provision if the summons has been issued on complaint, and on the day appointed for appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, after giving thirty days' time to the

- complainant to be present, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. Thus, if the complainant fails to appear on the day appointed for appearance of the accused or on any other day subsequent thereto, the Magistrate is vested with discretion to dismiss the complaint and acquit the accused.
4. It has to be borne in mind that the power under Section 279 of BNSS can be exercised by a Magistrate only at the stage post issuance of process against the accused. The provision clearly stipulates that the complaint must have been fixed for a day appointed for appearance of the accused or any other day thereafter. Power under Section 279 of BNSS cannot be invoked by the Magistrate at the stage when process against the accused is yet to be issued. It is also clear that consequence of dismissal of the complaint for non-appearance of complainant is acquittal of the accused. An order which amounts to acquittal of the accused is appealable in nature and the complainant has a right to file appeal against such order, of course, after obtaining leave of the High Court in terms of Sub Section (4) of Section 419 of BNSS. Therefore, the order of acquittal under Section 279 of BNSS is an

appealable order and cannot be challenged under Section 528 of BNSS or by invoking revisional power of the court.

5. However, the situation in the present case is somewhat different inasmuch as the learned trial Magistrate has dismissed the complaint of the petitioner at pre-cognizance stage. In these circumstances dismissal of the complaint is not one as contemplated under Section 279 of BNSS. Such an order would not amount to acquittal of the accused, as such, it is not appealable in nature. Thus, a petition under Section 528 of BNSS to challenge an order of dismissal of complaint at pre-cognizance stage would be maintainable if it has resulted in failure of justice. Even a Revision Petition would be maintainable in such a case. Accordingly, the present petition is held to be maintainable.
6. Turning to the merits of this case, it has been submitted in the petition that on the day when the complaint was dismissed for non-prosecution, the petitioner was under a bonafide belief that his counsel would appear on his behalf but due to some personal difficulty at home, the counsel could not appear and he did not even inform the petitioner about the same. These assertions have remained unrebutted as the respondent has not come forward to contest the petition despite service.

7. In view of the reasons assigned in the petition, it appears that non-appearance of the petitioner before the trial Magistrate was not deliberate but it was because of the reasons beyond his control. In these circumstances if the complaint filed by the petitioner before the trial Magistrate is not restored for its decision on merits, it would cause grave prejudice to the petitioner resulting in failure of justice. Thus, the instant case is fit one where this Court should exercise its powers under Section 528 of BNSS.
8. For the foregoing reasons, the petition is allowed and the impugned order passed by the learned trial Magistrate is set aside and the complaint is restored to its original position and the learned trial Magistrate is directed to proceed further in the matter in accordance with law.
9. Disposed of as above.
10. A copy of this order be sent to learned trial Magistrate for information.

(Sanjay Dhar)
Judge

SRINAGAR

21.07.2026

Aasif

Whether the order is speaking Yes/No

Whether the order is reportable Yes/No