

**IN THE COURT OF SH. HARJEET SINGH JASPAL:**  
**LD. ACMM-04, ROUSE AVENUE COURTS, NEW DELHI.**

**Ct Case 3/2023**  
**CNR No. DLCT12-000039-2023**

**Gajendra Singh Shekhawat**  
**Vs. Ashok Gehlot**

**19.09.2023**

**ORDER**

1. Vide this order, I shall decide the application u/s 256 Cr.PC filed on behalf of the accused Sh. Ashok Gehlot (hereinafter referred as the accused), seeking acquittal in the matter at hand, citing the absence of the complainant (hereinafter referred as the complainant) on 07.08.2023 and 21.08.2023.
2. Ld. Sr. Advocate Sh. Mohit Mathur, appearing for the applicant i.e. the accused has argued that the law u/s 256 Cr.PC is absolutely clear and warrants that in absence of the respondent on any date, without a justifiable cause, which is admitted by the court in the form of an order on

exemption application of the complainant, the accused ought to be acquitted in a complaint case. It was argued that on the aforementioned two dates when the respondent was not present no exemption application was moved by the counsel for the respondent and since no adjudication, qua the absence of respondent, was done on the said date, now they can be no exoneration for the said absence.

3. Explaining the scope and meaning of the word 'hearing' used u/s 256 Cr.PC, Ld. Sr. Advocate argued that Section 256 Cr.PC is not only applicable when the matter is listed for 'hearing' i.e. at the stage of evidence but it is applicable on every date and at every stage. As per him the said word cannot be given a restrictive meaning, so as to include the day of evidence only. As per the Ld. Counsel, Section 256 Cr.PC requires that the respondent must appear on the each date and it further requires judicial application of mind on each date when the respondent is not present. It was argued that use of the word 'opinion' u/s 256 Cr.PC requires that the Magistrate has to give a reasoned order for adjournment/acceptance of the exemption application,

when the respondent is not present and in the absence thereof the accused must necessarily be acquitted.

4. As per Mr. Mathur, even for the proviso to come into the picture there must have been an exemption application and since there was no such application on the aforementioned two dates, the accused must necessarily be acquitted.
5. Ld. Senior Advocate Sh. Vikash Pahwa argued the matter on behalf of the complainant/the respondent. Arguing *per contra*, he submitted that Section 256 Cr.PC is applicable only when the matter is pending for evidence of the complainant and not prior thereto. As per Mr. Pahwa, the stage of Section 256 Cr.PC commences only after framing of notice and not before. Since in the matter at hand no notice has yet been framed, no question of application of Section 256 Cr.PC arises.
6. Mr. Pahwa has further submitted that Section 256 Cr.PC cannot be used in retrospect that is to say that on the day when the complainant was not present, no application under the said section was moved by the Ld. Counsels for

the accused and moving an application at the belated stage would not warrant any favourable adjudication for the applicants/the accused.

7. Lastly, it was submitted that the proviso to Section 256 Cr.PC clearly provides that where the respondent is representing by a pleader/an advocate no orders can be passed under the said section.
8. In rebuttal Mr. Mathur argued that Section 256 Cr.PC is an exception to Section 251 Cr.PC; the former is not dependent upon the latter for its operation and further that it would be incorrect to assume that the said provision comes into operation only after the framing of notice. Mr. Mathur further submitted that if any course, other than the acquittal of the accused, on occasion of the absence of the complainant on the aforementioned dates, was to be adopted, the court ought to have passed a reasoned order on the said dates, however, since that is not the case in the matter at hand the accused now ought to be acquitted. He argued that a right provided to the accused by a statutory provision cannot be taken away.

9. Referring to the judgment of **Champalal Kapoorchand Jain Vs. Navyug Cloth Stores** and **Mithra Vs. Sundaramoorthi**, it was argued by Ld. Counsel for the accused that Section 256 Cr.PC mandates acquittal of the accused on account of absence of the complainant, on each date.
10. Further, referring to the judgment of **State Vs. Reva Chand** and **L.S. Patil Vs. Dundappa Kalkajappa Mallad**, the accused's counsel argued that appearance of the complainant through his counsel does not fulfill the requirement of Section 256 Cr.PC.
11. The respondent's counsel countered the aforementioned arguments by arguing that the two dates (as aforementioned) on which the complainant was not present were the dates fixed for supply of documents to the applicant/ accused and thus as such there was no reason for imposing the condition of compulsory attendance of the complainant and therefore, as per the Ld. counsel for the

complainant the entire application at hand and the relief claimed thereof are uncalled for.

12. Ld. Counsel for the complainant has placed on record the following judgments in favour of his arguments :

- i) *BLS Infrastructure Ltd Vs. Rajwant Singh & Ors. (2023) 4 SCC 326.*
- ii) *S. Rama Krishna Vs. S. Rami Reddy & Ors. (2008) 5 SCC 535*
- iii) *S. Anand Vs. Vaumathi Chandrasekar (2008) 4 SCC 67*
- iv) *Associated Cement Co. Ltd. Vs. Keshavanand (1998) 1 SCC 687*
- v) *Shineshilpi Jewellers Pvt. Ltd. Vs. Vimal Prakash Jain & Anr. (2023) SCC OnLine Bom 1445*
- vi) *Sakthivel Vs. Subramaniyan 2016 SCC OnLine Mad 10458*
- vii) *Chettinad Cement Corporation Ltd. Vs. The Proprietor, Rugmini Steels 2014 (3) MWN (Cr.) DCC 42 (Ker)*

*viii)Eicher Motors Ltd. Vs. Pushpa Chand ILR  
(2010) 1 Delhi 126*

13. Ld. Counsel for the accused has placed on record the following judgments in favour of his arguments :

- i) Champalal Kapoorchand Jain Vs. Navyug Cloth Stores, 2019 SCC OnLine Bom 4805*
- ii) Mithra Vs. Sundaramoorthi 2014 SCC OnLine Mad 11884*
- iii) State Vs. Reva Chand 1960 SCC OnLine All 100 : AIR 1961 All 352*
- iv) L.S. Patil Vs. Dundappa Kalkajappa Mallad 1959 SCC OnLine Kar 91 : AIR 1960 Mys 39*
- v) V.K. Bhat Vs. G. Ravi Kishore (2016) 13 SCC 243*

14. Having heard the submissions at length, I shall now proceed to decide the application at hand on its merits.

15. To begin with, it is logical to take on record the legislative mandate as contained in section 256 Cr.PC, the same is as under :

"Non- appearance or death of complainant.

(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 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.

(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.

16. Section 256 Cr.PC has been made a part of a criminal procedural law with the purpose to protect the interest of the accused against any malafide prolongation of trial at the hands of a vexatious complainant. It aims to ensure the presence of a complainant in a court of law, in course of complaint proceedings, on such occasions where the presence of the complainant is necessary to take the case forward.

17. Hon'ble Supreme Court of India in **Associated Cement Company Ltd. (Supra)** has explained the purpose of Section 256 Cr.PC in following words:

"What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum."

18. 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."

19. Section 256 Cr.PC mandates a criminal court to acquit the accused, on non appearance of the complainant, when the presence of the complainant is necessary, if the court thinks it proper to do so, however, in case the court decides to adjourn the hearing, the reasons for such adjournments

must also be recorded. The discretion provided by the Section must be exercised with care and caution.

20. It is settled position of law, as has been laid by Hon'ble Higher courts in plethora of judgments, that in exercising the aforesaid discretion u/s 256 Cr.PC the conduct of the complainant is of utmost importance. A matter cannot be allowed to be lingered on for eternity, at the cost of prejudice the rights of the accused.

21. A Magistrate or a criminal court exercising jurisdiction over a complaint case, is not justified in acquitting the accused at a drop of a hat, at the cost of adjudicatory disposal of the matter on its merits. Such technical disposals only lead to miscarriage of justice. It is time and again pressed by Hon'ble higher courts that litigants call upon the courts of law to seek adjudication of disputes on facts and not mere disposal on technical grounds.

22. Coming to the matter at hand, the major thrust of arguments on the side of the complainant is that on the two dates (as aforementioned) when the complainant was not

present, he was not necessarily required to be present for taking the proceedings further and even otherwise on both the said occasions the complainant was represented by his counsels. As per Ld. counsel for the complainant the said two dates cannot be called *hearing* within the meaning of Section 256 Cr.PC as the terms 'hearing' would encompass within its meaning, those dates or those hearings where the matter is fixed for evidence, after framing of notice however, in the matter at hand, since no notice has yet been framed, it cannot be called *hearing* within the meaning of Section 256 Cr.PC.

23. On the other hand, Ld. Sr. Advocate representing the applicant has argued that the term 'hearing' refers to every proceeding and every date/day where the matter is listed before the court and the complainant cannot seek absence or exemptions merely because the notice has yet not been framed.

24. Having considered the arguments put forth by both the sides and having carefully considered the case laws placed

on record by the two sides, I find merits in the submissions of Ld. counsel for the complainant.

25. As discussed hereinabove, the object of Section 256 Cr.PC is to protect the interest of the accused against any malafide prolongation of trial at the hands of a vexatious complainant, it aims to ensure the presence of a complainant in a court of law, in course of complaint proceedings, on such occasions where the presence of the complainant is necessary to take the case forward. It goes without saying that the discretion provided by Section 256 Cr.PC can be exercised only in a situations where the court believes that the absence of the complainant is deliberate and is being caused to prolong the suffering of the accused by continued trial. In the matter at hand, it does not appear to be the case.

26. The application at hand, seeks acquittal on account of the absence of the complainant on 07.08.2023 and 21.08.2023. The said two order sheets are perused. On both the said dates the matter was listed for supply of documents and scrutiny thereof. It clearly was not an opportunity to the

complainant to lead evidence. On both the said dates the Ld. Counsels for the complainant were present and therefore, it can be said that on the said dates the personal attendance of the complainant was not necessary to take the matter forward.

27. As discussed above, the conduct of the complainant is of immense significance and an absence on mere two dates and that too complainant was represented by his counsels and when the attendance of the complainant was not necessary for the proceedings of the day, cannot be called a justifiable ground to exercise the discretion u/s 256 Cr.PC, so as to acquit the accused. Reliance is placed on the observations of Hon'ble Supreme Court in the cases titled as **S. Rama Krishna (Supra)** and **Associates Cement Co. (Supra)**. At this juncture, I deem it appropriate to take on record the contextually relevant portion of the observations of the Hon'ble Supreme Court in **Associates Cement Co. (Supra)**:

"When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to

another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice."

28. In the matter at hand as well, since it is an undisputed fact that on the days in question the matter was fixed for supply of documents and scrutiny thereof, the presence of the complainant on the said days was quite unnecessary, specially considering that the Ld. counsel for the complainant was very much present before the court and therefore, in such situation resorting to the step of axing down the complaint, so as to acquit the accused, may not be a proper exercise of discretion u/s 256 Cr.PC.

29. The facts of the matter at hand, may be compared to the decision in **Shineshilpi Jewellers (Supra)**. In the said matter, the Hon'ble Bombay High Court was faced with a similar question i.e. whether two days absence of the complainant was sufficient for dismissal of the complaint. The Hon'ble Court answered as follows :

"Now, whether two day's absence is sufficient for dismissal? There is no straitjacket formula. It depends upon the facts. In particular case even six dates or more than that can be presumed to be sufficient for not dismissing the complaint. It is pure question of fact.

Learned Advocate Mr. Dave is right that now-a-days you can see roznama online. He is right that the accused is not required to attend the court and to reproduce record. However, what I feel is that two days absence cannot be said to be justifiable ground for dismissing the complaint. It is not job of the court to see that the matters are dismissed just because either of party is not remaining present. The job of the court is to see that justice is done by giving sufficient opportunities to the parties. Always there is rule of audi alteram partem. In this case what I feel is that the learned Magistrate has hastily dismissed the complaint. In fact, one option was available to learned Magistrate that is to say, while adjourning the matter he could have regulated conduct of the complainant, even by passing certain strict orders, that is to say, even by imposing cost. Leaned Magistrate has simply considered absence of complainant only on two dates and dismissed the complaint."

30. The argument put forth by the Ld. counsel for the accused that the complainant must necessarily be present on all dates before the court and a failure thereof would lead to a compulsory exercise of discretion u/s 256 Cr.PC and it was argued further that since on aforementioned two dates, when the complainant was not present, the court did not specifically allow the exemption application of the

complainant (since it was not filed) this by itself amounts to a ground for acquittal of the accused. This court finds no merits in the said arguments put forth by the Ld. Counsel for the accused. The terms hearing cannot be given meaning argued by Ld. Counsel for the accused. In fact, of the 05 judgments which Ld. counsel has placed on record, in two, the 'hearing' is being referred to day of evidence. In others, the 'hearing' cannot be read to have a definitive meaning for want of clarity on the 'stage of proceedings'; otherwise too they are distinguishable.

31. Ergo, in the light of the aforesaid discussion, the application at hand stands dismissed. Copy of the order be given dasti to the applicant/the accused.

**Announced in open court  
on 19.09.2023**

**(Harjeet Singh Jaspal)  
ACMM-04, RADC, New Delhi**