

## R. Sekar Vs S. Rajendran

**Court:** Madras High Court

**Date of Decision:** Feb. 4, 2004

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 256  
Negotiable Instruments Act, 1881 (NI) â€” Section 138

**Citation:** (2004) 2 BC 456 : (2004) 1 CTC 689 : (2004) 2 RCR(Criminal) 85

**Hon'ble Judges:** A.K. Rajan, J

**Bench:** Single Bench

**Advocate:** K. Lavan, for the Appellant;

**Final Decision:** Allowed

### Judgement

A.K. Rajan, J.

This appeal is filed against the order of acquittal of the respondent for the offence punishable u/s 138 of the Negotiable Instruments Act.

2.It is seen from the order passed by the lower court that the lower court has acquitted the accused on the ground that when the matter was called,

the complainant as also the accused were not present. Therefore the trial court by exercising the discretion u/s 256 Cr.P.C. acquitted the accused .

Aggrieved against the same, the present appeal has been filed.

3.Learned counsel for the appellant submitted that on the date of hearing, the case was not posted for examination of witnesses and even the

accused was also not present. The presence of the complainant was not absolutely necessary on the date when the case was posted. It would be

proper to adjourn the case to some other date. But the Magistrate has exercised his discretion and dismissed the case by acquitting the accused on

that ground.

4.The Supreme Court in the case in Associated Cement Co. Ltd. Vs. Keshjvanand 1998 Crl.L.R. 856 has held as follows:

Two constraints are imposed on the Court for exercising the power u/s 256. First is, if the Court thinks that in a situation it is proper to adjourn

the hearing, then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant

is not necessary on that day, the Magistrate has the power to dispense with his attendance and proceed with the case. 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 date was quite unnecessary, then resorting to the step of axing down the complaint may not be proper exercise of power

envisaged in the Section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal

justice.

5. In view of the above said Judgment, the lower court should not have exercised its discretion but adjourned the matter to some other date when

the presence of the complainant was not absolutely necessary. Therefore, the order of the Magistrate is not legally sustainable and it is set aside.

The appeal is, therefore, allowed.