

**(2006) 07 KL CK 0094**

**High Court Of Kerala**

**Case No:** Criminal A. No. 615 of 2005

G.F.S. Chits and Loans (P) Ltd.

APPELLANT

Vs

V.K. Rajesh and Another

RESPONDENT

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**Date of Decision:** July 17, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 256, 256(1)
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2007) 4 BC 304 : (2006) 3 ILR (Ker) 574 : (2006) 3 KLJ 114 : (2006) 3 KLT 825

**Hon'ble Judges:** K. Hema, J

**Bench:** Single Bench

**Advocate:** Latha Prabhakaran, for the Appellant; K.J. George (PP), for the Respondent

**Final Decision:** Allowed

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### **Judgement**

K. Hema, J.

Can a Magistrate acquit an accused u/s 256(1) of the Code of Criminal Procedure on any ground other than "non-appearance of the complainant?" This short question comes up for consideration in this appeal. This is an appeal filed against the order of acquittal u/s 256(1) of the Code of Criminal Procedure ("Code", for short). The appellant filed a complaint alleging offence u/s 138 of the Negotiable Instruments Act against the first respondent. The complaint was taken on file and summons was issued to the accused. Thereafter, the case was posted to several dates. On 17-8-2004, warrant was issued against the accused. The case was then posted to 17-11-2004. On that day, learned Magistrate acquitted the accused u/s 256(1) of the Code.

2. The impugned order reads as follows:

The case was called on for hearing today to which it had been adjourned. The complainant not being present either in person or by pleader, the accused is

acquitted u/s 256. Criminal Procedure Code.

3. Learned Counsel for appellant submitted that the complainant was actually present in court on the crucial day and hence, the trial court seriously erred in acquitting the accused on the alleged ground of "non-appearance" of the complainant u/s 256 of the code. To support this argument, certified copy of the proceedings-sheet was produced by the appellant. As per the proceedings-sheet, the following order is seen passed by the learned Magistrate:

17.11.2004: complainant present. Accused absent. NBW issued through complainant was not executed. No reasonable explanation was given for the non-execution which shows the complainant is not diligent in prosecuting the accused. So, the accused is acquitted u/s. 256(1) Cr.P.C.

4. It is evidence from the two orders extracted in this judgment that both those orders are mutually contradictors and totally inconsistent with each other, especially on the most vital aspect viz., the presence of the complainant in court on the crucial day. While in the proceedings-sheet, it is recorded that the complainant was present in court on 17-11-2004, the order issued to the appellant; shows that the complainant was absent on the same day. It is not understood why, how, and under what circumstances such a grave discrepancy crept in, in the court's record. But, the mistake cannot be justified by any explanation.

5. Any way, it is quite clear from the above facts that the trial court acquitted the accused on a day when the complainant was actually present in court. The proceedings sheet would reveal that the accused was acquitted since complainant was not diligent etc. Can a Magistrate acquit an accused on any ground other than "non-appearance of complainant, u/s 256 of the Code? I shall examine Section 256, which reads as follows:

Section 256: 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.

6. Section 256 reveals, as indicated in the title itself, that the court can acquit the accused under the said section, only on the ground viz., "non-appearance of the

complainant". This, of course, includes non-appearance due to death of the complainant; also. But, Section 256 does not empower the court or give any jurisdiction to the court to acquit the accused on any ground other than non-appearance of complainant. The failure in taking steps, laxity in producing and adducing evidence etc., are not grounds to acquit an accused u/s 256 of the code, if the complainant is present in court.

7. Admittedly, the impugned order contains a serious error in respect of presence of the complainant in court on the crucial day, which is confirmed from the proceedings-sheet itself. Had the proceedings been silent on this aspect, no doubt, it would have been difficult for the appellant to assert and establish his case, since a court's order is presumed to contain only the true account of what transpired in court. It is also not quite desirable to call for any evidence to establish an alleged falsity of a court's record, especially in matters like presence of a party or a lawyer etc. But, at the same time, one cannot forget that this very system exists to protect and armour the rights of an individual.

8. Several complaints are raised at the Bar that the Magistrate's courts are not maintaining the records properly, containing the correct or even the bare relevant details regarding presence of complainant, representations by pleader, filing of any application etc. which would be essential for the appellate court to appreciate the contentions raised in appeals like this and for a proper adjudication of the matter. Grievances are also voiced that the accused are being acquitted by Magistrate Courts, especially towards the end of the month, without any application of mind, for mere statistical purpose. It is needless to say that maintenance of an accurate record containing the correct details of what transpired in court is an inevitable, indispensable legal requirement. A court's record shall hem in only, the indisputable actuals. It shall be a clean account of accuracy. It shall be; the gospel on which a party, lawyer or an appellate forum can safely act, unsupported by any further authenticating material. It shall speak the truth and truth alone, so that no court shall ever be placed on the dock, standing the trial on truth, of its record. There should never be a situation the trial on truth, of its record. There should never be a situation where a request is made by any party, lawyer or a witness to the appellate court to verify the veracity of the court-records, especially in matters like presence or absence of a party, lawyer or representation by him etc. The courts shall also bear in mind that unmerited, thoughtless disposal gives a wrong signal to the society, taking even public confidence in the system of administration of justice. It is wise to remember as well that unwarranted haste can curdle unexpected errors. It shall not occur hereafter.

Summing up, I hold that the impugned order is illegal and without jurisdiction. It is therefore, set aside. Learned Magistrate is directed to take the case on file and dispose of the same afresh, in accordance with law. Parties shall appear before the trial court on 9-8-2006.

Registry is directed to communicate copy of this judgment to all Magistrate Courts in the State.

This appeal is allowed.