

**(2011) 11 MAD CK 0143**

**Madras High Court**

**Case No:** Criminal Appeal No. 670 of 2008

Srinidhi Mobile Financial Services

APPELLANT

Vs

R. Sangeetha, Proprietrix City  
Sun Motors Ontipudur,  
Coimbatore

RESPONDENT

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**Date of Decision:** Nov. 1, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 256(1), 274

**Citation:** (2012) 2 MLJ 300

**Hon'ble Judges:** K.B.K. Vasuki, J

**Bench:** Single Bench

**Advocate:** Ma. P. Thangavel, for the Appellant; Notice unserved, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Honourable Ms. Justice K.B.K. Vasuki

1. The complainant, who is the private complainant in C.C. No. 1009 of 2007, is the appellant herein. The appeal is filed challenging the order of acquittal of the accused, for the absence of the complainant on the date of hearing.

2. The perusal of the records reveal that the private complaint was filed on 21.06.2007 and was taken up on file on 27.09.2007 and process was issued to the accused for the hearing on 22.11.2007 and the accused duly entered appearance through his counsel on record and there were few adjournments between 22.11.2007 and 12.08.2008. The complainant was on 12.08.2008 absented himself and not represented by anyone. As a result, the trial court dismissed the complaint and acquitted the accused u/s 256(1) Cr.P.C. Hence, this appeal by the complainant / appellant before this Court questioning the correctness and validity of such order.

3. The Learned Counsel for the appellant relied upon the following authorities, in support of his contention that the course adopted by the trial Court in dismissing the complaint and in acquitting the accused for the absence of the complainant for one hearing is not proper and fair :

(i) 1998 (1) CCR 82 (SC) (Associated Cement Company Ltd. v. Keshvanand);

(ii) 1998 (1) MWN (Cr.) 227 (N.R.Janarthanam v. Manjula Panneerselvam) (KPSJ, High Court, Madras);

(iii) 2001 (2) MWN (Cr.) 275 (Wakefield Spinners by its Partner D. Parthasarathy v. K.N. Raman) (A. Pakiaraj, J., High Court, Madras);

(iv) 2003 (1) L.W. (Crl.) 273 (S. Ravichandran v. V. Pandiyan)

4. It is contended by the Learned Counsel for the complainant/appellant that the trial Court ought to have by exercising its discretionary powers reasonably and judicially adjourned the case to another date particularly when the accused was also absent. It is also contended by the Learned Counsel for the appellant that the dismissal of the complaint in the absence of a party, who is not a chronic defaulter, that too on single occasion would render the administration of justice meaningless and the reasons assigned by the trial Court for rejecting the complaint at the stage of trial are unjustified and unwarranted.

5. this Court finds some force in the argument so advanced on the side of the Learned Counsel on record for the appellant. The same is also fortified by the observation of the Hon"ble Supreme Court in the judgments above referred to. The Hon"ble Apex Court has in the authorities cited above lends support to the contention raised by the complainant that exonerating the accused from the charges due to non-appearance of the complainant is exfacie illegal and not sustainable in law.

6. For better appreciation, this Court is inclined to extract the observation of the Hon"ble Supreme Court in paragraph Nos. 16 and 17 of the Judgement in (1998) 1 CCR 82 (SC) follows:

16. 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 a protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, Court has a duty to acquit the accused in invitum.

17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. 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 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.

The observation of the Hon"ble Supreme Court is duly followed by our High Court, in the judgment reported in 2001 (2) MWN (Cr.) 275 (Wakefield Spinners by its Partner D. Parthasarathy v. K.N. Raman), in paragraph 3 of the judgment, our High Court extracted the observation of the Hon"ble Supreme Court, which is 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 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.

7. Our High Court in the judgment reported in 2003 (1) L.W. (Cr.) 273 (S. Ravichandran v. V. Pandiyan) observed in paragraph No. 7 that "the trial court is cautioned against passing such orders hereafter and shall take sufficient care and caution prior to passing such slipshod orders, without any ground for passing such order under the provision of which the same has been passed or without assigning valid or tangible reasons in support of the order passed. Such attitude adopted on the part of the lower court only gives way for this Court to cause interference into the same". The Hon"ble Supreme Court and the learned Brother Judge of our High Court have, in all the cases cited above, set aside the order of acquittal and

remanded the matter to the trial court for fresh disposal and directed the prosecution to proceed from the stage at which the order of acquittal was passed. this Court is, applying the same ratio herein, inclined to set aside the order impugned in this appeal.

8. In the result, the criminal appeal is allowed by setting aside the order dated 12.08.2008 made in C.C. No. 1009 of 2007 on the file of the Judicial Magistrate No. III, Coimbatore and the case is remanded back to the trial court for continuation of the proceedings in accordance with the procedure established by law, after giving due opportunity to both the parties. Considering the date on which the complaint is taken on file, the trial court is directed to proceed with the case and dispose of the same expeditiously, not later than 6 months from the date of receipt of the copy of this judgment along with lower Court records.