



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 12410**  
**of 2023**  
**In R/CRIMINAL APPEAL NO. 1699 of 2023**  
**With**  
**R/CRIMINAL APPEAL NO. 1699 of 2023**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MRS. JUSTICE M. K. THAKKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

BARODA GUJARAT GRAMIN BANK MANJALPUR BRANCH THRO  
 KETANKUMAR PUNAMCHAND PRAJAPATI  
 Versus  
 STATE OF GUJARAT & ANR.

Appearance:

MR MANTHAN K BHATT(6549) for the Applicant(s) No. 1

MR.JAY MEHTA ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

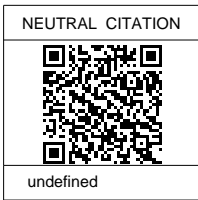
RULE SERVED for the Respondent(s) No. 2

**CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER**

**Date : 18/06/2024**

**ORAL JUDGMENT**

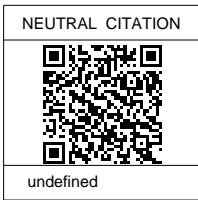
1. This application is filed seeking leave to prefer an appeal challenging the judgment and order passed in Criminal



Case No.22928 of 2017 dated 10.07.2017 by the learned Chief Judicial Magistrate, Vadodara acquitting the respondent-accused from the offence punishable under section 138 of the Negotiable Instruments Act,1881 (hereinafter referred to as the "N.I.Act") by exercising the power under section 256 of the Criminal Procedure Code, 1973 (hereinafter referred to as the "Cr.P.C.").

2. It is the case of the complainant that, complainant is the Bank, providing financial facility to the members. The respondent-accused has availed the financial facility under the Bajpayee Backable Scheme for the purpose of engineering works of Rs.3,80,000/- on 25.06.2012, for repayment of the aforesaid amount, the cheque bearing No.295701 dated 29.05.2017 was issued for the amount of Rs.3,23,063/-.

2.1. On depositing the aforesaid cheque, it was dishonoured with an endorsement of "*Account Closed*" on 31.05.2017. therefore, after following the due procedure under the N.I.Act, a private complaint came to be filed before the competent Court. On filing the complaint, verification was recorded by the learned trial court and respondent-accused was summoned,

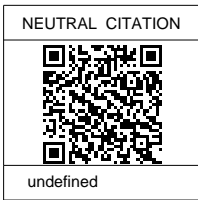


thereafter, case came to be adjourned time to time and on 12.04.2023, the learned trial court has dismissed the complaint on the ground of non prosecution by exercising the power under section 256 of the Cr.P.C. which is subject matter of challenge before this Court.

3. Heard learned advocate Mr.Manthan Bhatt and perused the record and proceedings.

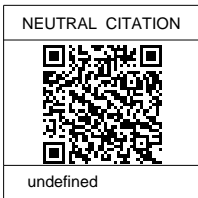
3.1. It is submitted by the learned advocate Mr.Bhatt that on dismissing the complaint, the complainant who is a Public Exchequer was deprived from the rights of recovering the loan amount. Learned advocate Mr.Bhatt submits that as the public money is involved, the learned trial court ought not to have exercised the power under section 256 of the Cr.P.C. and could have provided one more opportunity to lead the evidence before the learned trial court.

3.2. Learned advocate Mr.Bhatt submits that the proceedings under section 138 of the N.I.Act is time barred litigation and due to dismissal of the complaint, the complainant was left remediless and therefore he has



prayed to quash the impugned judgment and order of acquittal and therefore learned advocate Mr.Bhatt has submitted to grant the leave to prefer an appeal and to admit the appeal.

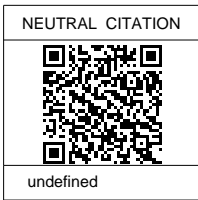
4. This court has considered the submissions made by the learned advocate and perused the record and proceedings. It transpired from the Rojkaam that on filing the complaint with regard to the aforesaid allegations, the learned trial court has recorded the verification and issued summons on 10.07.2017 making it returnable on 06.09.2017, thereafter, matter was adjourned by the learned trial court on 06.09.2017, 03.01.2018, 14.02.2018, 11.04.2018, 02.08.2018, 03.10.2018, 19.12.2018, 06.02.2019, 15.05.2019 wherein the noting is made that complainant and his advocate is absent. On 31.07.2019, the learned advocate for the complainant is present and the nonailable warrant was issued to the accused again on 07.09.2019. On 04.12.2019 the complainant remained absent, on 19.02.2020, though the accused remained present, but without informing the Court he left the Court, therefore case came to be



adjourned for service of nonailable warrant. Again the case came to be adjourned due to Covid-19 guidelines, thereafter, as per the noting made in the Rojkaam absence of the learned advocate for the complainant and the complainant was recorded on 13.08.2021, 08.10.2021, 26.11.2021, 31.12.2021, 04.03.2022, 12.04.2022, 01.07.2022. On 29.07.2022 accused remained present and his plea came to be recorded on 05.08.2022 below Exh.18. Again as per the noting made in the Rojkaam absence of the complainant was recorded on 16.09.2022, 14.10.2022, 18.11.2022, 16.12.2022, 30.12.2022, 20.01.2023, 20.02.2023 and on 12.04.2023 impugned judgment and order of acquittal was passed.

5. The provisions under which, the impugned order is passed, is required to be relooked. Section 256 of the Code of Criminal Procedure is reproduced herein below:-

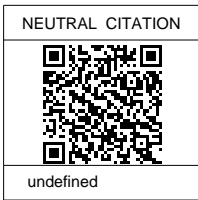
*“256. Non- appearance or death of complainant.  
(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything 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 nonappearance of the complainant is due to his death."*

6. It is true that party having fair case should not suffer because of his absence, but at the same time, dilatory tactics on the part of the complainant who set the criminal law in motion by filing the private complaint should be restricted. An accused who is forced to attend the court on all posting days can put harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. With a view to protect to the accused against such tactics of the complainant, the provision list Section 256 of the Code was added.
- 6.1. Commenting on the delay in the justice-delivery

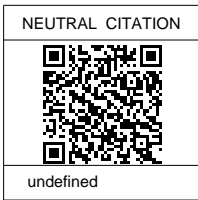


system, although in respect of the criminal trial, Krishna Iyer, J. in the case of Babu Singh v. State of U.P. (1978) 1 SCC 579 has observed in paragraph 4 as under:-

*“4. ... Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to ‘fair trial’, whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.”*

6.2. Then the Hon’ble Apex Court in the case of **Ishwarlal Mali Rathod vs. Gopal & Ors. in Special Leave Petition (Civil) Nos.14117-14118 of 2021** observed that:

*“5.5 Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to*

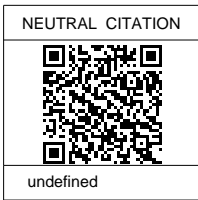


*perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom Courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants. ...”*

- 6.3. The Hon’ble Apex Court in the case of **S. Rama Krishna vs. S. Rami Reddy (Dead) by his Lrs. & Ors. (2008) 5 SCC 535** observed as under:

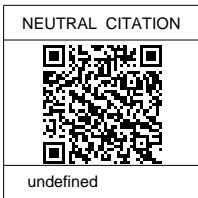
*“A. Criminal Procedure Code, 1973 - Ss. 256(1) and 378(1) - Ingredients of S. 256(1) - Acquittal of accused on non-appearance of complainant - Exercise of jurisdiction by Magistrate under S. 256(1) - Scope of - Conduct of the complainant*





*significant - Interference of High Court under S. 378(1) in appeal against acquittal of accused recorded by Magistrate in exercise of discretion under S. 256(1) whether justified - Complaint filed against appellant for dishonour of cheque on 6.6.2001 - After death of complainant his heirs did not press their application for substitution - On 14 dates between 18.4.2005 to 23.1.2006 nobody represented the complainant - accused kept appearing on most dates - Noticing respondent heirs' failure to attend court for a long time, Magistrate under S. 256 acquitted the appellant on 23.1.2006 - High Court in appeal under S. 378(1), despite finding that respondent heirs were not interested in getting the matter prosecuted, set aside the order of acquittal on ground that lis between the parties should be decided on merits and directed that respondents be given one more opportunity - Held, High Court in appeal against acquittal erred in interfering with the discretion exercised by Magistrate under S. 256(1)"*

7. It is true that complainant is a public servant, however as noted above when the complainant is not interested in proceedings pending before the learned trial court, learned Magistrate would have no alternative, but to dismiss the complaint and acquit the respondent-accused. From the record reveals that case is pending



before the learned trial court since last 6 years and his advocate remained present hardly for two to three occasions. It further reveals that on appearance of the respondent-accused, the trial came to be adjourned for 8 occasions for the cross examination of the complainant where the personal attendance of the complainant is necessary. Therefore, this Court is of the view that this dilatory tactics should be deprecated even if the complainant is a public servant.

8. In view of the same, this Court does not find any reasons to interfere with the impugned judgment and order of acquittal and therefore, deems it fit to reject this application for seeking leave to prefer an appeal. Hence this application is dismissed.

**ORDER IN R/CRIMINAL APPEAL NO. 1699 of 2023**

In view of the order passed in Criminal Miscellaneous Application No.12410 of 2023, the present appeal is also dismissed.

NIVYA A. NAIR

**(M. K. THAKKER,J)**