

Shivdas Vs. State of Maharashtra and Another

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Court : Mumbai Nagpur

Decided On : Dec-06-2012

Judge : M.L. Tahaliyani

Appeal No. : Criminal Application (Apl) No.362 of 2012

Appellant : Shivdas

Respondent : State of Maharashtra and Another

Advocate for Def. : Mr. Lohiya

Advocate for Pet/Ap. : Mr. B.N. Mohta

Judgement :

Oral Judgment:

Admitted. Heard finally by consent of parties. Heard Mr. B.N. Mohta, learned counsel for the applicant; Mr. J.B. Jaiswal, learned APP for respondent No.1 and Mr Giramkar, Adv.h/for Mr Lohiya, learned counsel for respondent no.2.

2. The applicant feels aggrieved by the order passed by the learned Additional Sessions Judge on 12th March 2012 in Revision Application No.612/2011. Said Revision Application was filed by the respondent no.2-Aniruddha against the order passed by the learned Judicial Magistrate, First Class, in Summary Cri. Complaint Case No.12791/2010. The order of the learned Magistrate is runs as under :

"Accused and his learned Adv. present while complainant and his learned Advocate absent. Today the case is fixed for evidence and order on Exh.15. The complainant absent and not filed his evidence affidavit till 2.40 p.m."

"Hence the complaint stands dismissed under Section 256 Cr.P.C."

3. The respondent No.2-Aniruddha Kamble was the complainant in said Summary Case before the Magistrate and the applicant-Shivdas was the accused for the offence punishable u/s.138 of the Negotiable Instruments Act. As can be seen from the order, the respondent no.2/complainant was absent on 6th June, 2011 and, therefore, the Complaint stood dismissed u/s 256 of Cr.P.C. The respondent no.2-complainant challenged the said order before the Sessions Court. The applicant raised objection for entertaining the Revision Application on the ground that dismissal of Complaint u/s. 256 of the Cr.P.C. amounted to acquittal of the applicant and, therefore, the Revision Application was not maintainable. The learned Additional Sessions Judge has turned down the plea raised by the applicant.

4. I have gone through the impugned orders of the learned Addl. Sessions Judge and the learned Magistrate. I have also gone through the provisions of Section 256 of Cr.P.C., which runs as under :

"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 complaint 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."

5. A plain reading of Section 256 Cr.P.C. makes it clear that if the complainant and his Advocate both are absent, the Magistrate is under obligation to acquit the accused unless, for the reasons, he thinks it proper to adjourn the hearing of the case for some other day. As such, the acquittal of accused for non-appearance of complainant is a rule and adjournment of the case despite absence of the complainant, is an exception. The learned Magistrate in his impugned order has used the word 'dismissed'. The terminology used by the learned Magistrate hardly makes any difference. Once the order is passed u/s 256 of Cr.P.C, it amounted to acquittal of the applicant. Therefore, the order of the learned Addl. Sessions Judge in Criminal Revision Application No.612/2011 was not correct. Consequently, the said order will have to be set aside. The respondent no.2 will be at liberty to take appropriate proceeding before the competent forum. Hence, I pass the following order:

ORDER

Revision Application is allowed. The order passed by the learned Addl. Sessions Judge in Criminal Revision Application No.612/2011 on 12th March 2012 is set aside. The respondent no.2 is at liberty to file appropriate proceedings before the competent Court against the order passed by the Judicial Magistrate. Interim order, if any, stands vacated.

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