

[Home \(/\)](#) / [High Courts \(/high-court\)](#) / [Rajasthan High Court \(/high-court/rajasthan-high-court\)](#) / [Magistrate's Power U/S 256 CrPC To...](#)

Magistrate's Power U/S 256 CrPC To Be Used Sparingly, Not For 'Statistical Purposes Of Removing Docket From Rack': Rajasthan High Court

Sebin James

(/sebin-james)

27 April 2024 5:25 PM

Share this



Listen to this Article

0:00 / 4:16

Rajasthan High Court has recently discussed in detail the powers of a Magistrate under Section 256 Cr.P.C, which should be used judiciously and based on a definite conclusion that the complainant no longer wants to prosecute the accused.

The court added that such power shouldn't be used 'whimsically' and 'mechanically' for statistical purposes like 'removing a docket from the rack'. It underscored that such drastic steps would undermine the cause of justice.

In this case falling under Section 138 of the N.I. Act, the single-judge bench of **Justice Anoop Kumar Dhand** observed that the complainant or his counsel was present before the court in almost every instance, from the filing of the case in 2013 to the transfer of the case in 2021. In 2021, the criminal proceedings arising out of the cheque bounce were transferred to another court without giving intimation to the complainant, the court pointed out.

The complainant was not able to appear before the court due to a lack of knowledge about the transfer of the case, the single-judge bench denoted the possible scenario.

“Instant case is not a case where the accused persons were appearing regularly before the trial Court to attend the Court proceedings and the complainant was using dilatory tactics to prolong the disposal of the complaint to unnecessarily harass the accused respondents...”, the bench sitting at Jaipur inferred after perusing the records.

At the time of dismissing the case for want of prosecution in 2022, the proceedings had only reached the stage of securing the appearance of the accused. On the date when the complaint was disposed, neither the complainant nor his counsel was present before the Court of Special Metropolitan Magistrate (NI Act Cases) No.12.

However, the court emphasized that the trial court hadn't passed any order stipulating the presence of the complainant previously. In the absence of such an order, the trial could have adjourned the case to another date after expressly directing the complainant to remain present on the next occasion, the court clarified.

“...Without adopting the above reasonable course and providing the complainant a fair opportunity, the learned Magistrate rejected the complaint for want of presence of the complainant and acquitted the accused respondents... The impulsive decision of the learned Magistrate has led to miscarriage of justice warranting interference of this Court”, the court further stated in the order.

Section 256 of Cr.PC is meant to deter the complainant from deploying dilatory tactics with an intention to harass the accused by prolonging the prosecution, the court initially opined in the order. The reasonable step in such a case would be to direct the complainant to appear for the hearing first, the court noted. Later, the court could decide whether the *drastic step of acquittal* should be passed if the complainant fails to appear, Justice Dhand remarked.

“...It is not proper to throw out a case in a hasty or thoughtless manner where the complainant has proved his bona fides and shown himself vigilant in prosecuting the accused”, the court explained by relying on the Kerala High Court decision in *Bijoy v. State of Kerala* (2016) and the apex court decision in *The Associated Cement Co. Ltd v. Keshvanand* (<https://indiankanoon.org/doc/1219241/>) (1997).

Stating the above reasons, the court set aside the Magistrate's order dated 05.04.2022 that straightaway dismissed the complaint upon the complainant's absence. The court allowed the criminal appeal by saying that proceedings would stand restored to the original number on the file of the Magistrate. Justice Dhand also added that the proceedings would resume from the stage where it was right before its dismissal.

For Appellant: Mr. Nishant Sharma.

For Respondents: Mr. JR Tantia

Case Title: K. K. Construction v. Shri Bhagwan Singh Poswal, Chairman Shri Vinayak Mission Medical and Education Society Jaipur & Ors.

Case No: S.B. Criminal Appeal (SB) No. 2765/2023

Citation: 2024 LiveLaw (Raj) 62

Click Here To Read/ Download Order

(https://www.livelaw.in/pdf_upload/2031000276520232-536454.pdf)

Tags

Section 256 CrPC (<https://www.livelaw.in/tags/section-256-crpc>)

Dismissed For Non-Prosecution (<https://www.livelaw.in/tags/dismissed-for-non-prosecution>)

Justice Anoop Kumar Dhand (<https://www.livelaw.in/tags/justice-anoop-kumar-dhand>)
