

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 557 of 2025**

**Reserved on: 03.08.2026**

**Date of Decision: 10.08.2026.**

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Dile Ram ..Appellant

Versus

Bhume Ram ...Respondent

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

*Whether approved for reporting?<sup>1</sup> No*

For the Appellant : Mr Lokesh Thakur, Advocate.

For the respondents : Mr V.K. Gupta, Advocate vice Mr  
Bhupinder Singh Pathania,  
Advocate.

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***Rakesh Kainthla, Judge***

The present appeal is directed against the order dated 03.05.2025 passed by the learned Chief Judicial Magistrate, Mandi (learned Trial Court) vide which the complaint filed by the appellant (complainant before the learned Trial Court) was dismissed for non-prosecution. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court against the accused for taking action against him for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act).

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The matter was listed for recording the statement of complainant's witnesses on 10.03.2025, when a prayer was made that the matter could be reconciled between the parties. Hence, the matter was adjourned for 03.05.2025 for the compromise between the parties. None appeared on 03.05.2025, and the learned Trial Court dismissed the complaint for non-prosecution.

5. Being aggrieved by the order passed by the learned Trial Court, the complainant has filed the present appeal asserting that he had forgotten the date of hearing. The accused

had also not appeared on the date fixed. The complainant would not have been absent had the other party been ready to compromise the matter. The complainant was put to huge financial loss by dismissal of the complaint. Hence, it was prayed that the present appeal be allowed and the order passed by the learned Trial Court be set aside.

6. I have heard Mr Lokesh Thakur, learned counsel for the appellant/complainant and Mr V.K. Gupta, learned vice counsel representing the respondent/accused.

7. Mr Lokesh Thakur, learned counsel for the appellant/complainant, submitted that the matter was listed for compromise between the parties. The accused had also not appeared, and the learned Trial Court should have exercised the discretion to adjourn the matter. The learned Trial Court erred in not doing so. Therefore, he prayed that the present appeal be allowed and the order passed by the learned Trial Court be set aside.

8. Mr V.K. Gupta, learned vice counsel representing the respondent/accused submitted that the matter was listed for recording the compromise and the complainant's presence was

necessary for this purpose. The complainant failed to appear before the Court and the Court was justified in dismissing the complaint. This was a reasonable view that could have been taken by the learned Trial Court and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Hence, he prayed that the present appeal be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, (2025) 5 SCC 433: 2025 SCC OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed on page 438:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent

perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

11. This position was reiterated in *State of M.P. v. Ramveer*

*Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

12. A similar view was taken in *Tulasareddi v. State of*

*Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be

kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

13. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

14. The matter was listed for compromise. The necessary consequence of the complainant's non-appearance would have been to list the matter for recording the statements of the complainant's witnesses after holding that the compromise was

not successful. The presence of the complainant for passing such an order was not required.

15. Section 256 of Cr.P.C. reads 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 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.”

16. The ingredients of Section 256 of Cr.P.C. were noted by the Hon’ble Supreme Court in *S. Rama Krishna v. S. Rami Reddy*, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645: 2008 SCC OnLine SC 733 as under:

“9. The ingredients of Section 256(1) are: (i) that summons must have been issued on a complaint; (ii) the Magistrate should be of the opinion that for some reason, it is not proper to adjourn the hearing of the case to some other date; and (iii) the date on which the order under

Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned.

17. It is apparent that the Magistrate should be satisfied before dismissing the complaint that it is not proper to adjourn the hearing of the case. It was held in *S. Anand v. Vasumathi Chandrasekar*, (2008) 4 SCC 67: (2008) 2 SCC (Cri) 178: 2008 SCC OnLine SC 285, that where the presence of the complainant was not required, the complaint should not have been dismissed. It was observed: -

“12. Section 256 of the Code provides for the disposal of a complaint in default. It entails an acquittal. But the question which arises for consideration is as to whether the said provision could have been resorted to in the facts of the case as the witnesses on behalf of the complainant have already been examined.

13. The date was fixed for examining the defence witnesses. The appellant could have examined witnesses if he wanted to do the same. In that case, the appearance of the complainant was not necessary. It was for her to cross-examine the witnesses examined on behalf of the defence.

14. The accused was entitled to file an application under Section 311 of the Code of Criminal Procedure. Such an application was required to be considered and disposed of by the learned Magistrate. We have noticed hereinbefore that the complainant did not examine herself as a witness. She was sought to be summoned again for cross-examination. The said prayer has not yet been allowed. But that would not mean that on that ground the court would exercise its discretionary jurisdiction under Section 256 of



the Code of Criminal Procedure at that stage or the defence would not examine its witnesses.

15. The presence of the complainant or her lawyer would have been necessary, as indicated hereinbefore, only for the purpose of cross-examination of the witnesses examined on behalf of the defence. If she did not intend to do so, she would do so at her peril, but it cannot be said that her presence was necessary. Furthermore, when the prosecution has closed its case, and the accused has been examined under Section 311 of the Code of Criminal Procedure, the court is required to pass judgment on the merit of the matter.

18. It was held in *BLS Infrastructure Ltd. v. Rajwant Singh*, (2023) 4 SCC 326: 2023 SCC OnLine SC 200, where the Magistrate is satisfied that the personal attendance of the complainant is not necessary. He can dispense with the attendance of the complainant and proceed with the case.

12. A plain reading of the proviso to sub-section (1) of Section 256 would indicate that where the Magistrate is satisfied that the personal attendance of the complainant is not necessary, he can dispense with the attendance of the complainant and proceed with the case. Such a situation may arise where the complainant's/prosecution's evidence has been recorded and, to decide the case on the merits, the complainant's presence is not necessary.

13. In *S. Anand [S. Anand v. Vasumathi Chandrasekar, (2008) 4 SCC 67: (2008) 2 SCC (Cri) 178]*, addressing a situation where the complainant was absent but had already examined his witnesses, this Court observed as follows: (SCC p. 69, paras 12-13)

“12. Section 256 of the Code provides for the disposal of a complaint in default. It entails

acquittal. But the question which arises for consideration is as to whether the said provision could have been resorted to in the facts of the case as the witnesses on behalf of the complainant have already been examined.

13. The date was fixed for examining the defence witnesses. The appellant could have examined witnesses if he wanted to do the same. In that case, the appearance of the complainant was not necessary. It was for her to cross-examine the witnesses examined on behalf of the defence.”

After observing as above, in para 15, it was held thus: (*S. Anand case [S. Anand v. Vasumathi Chandrasekar, (2008) 4 SCC 67 : (2008) 2 SCC (Cri) 178], SCC p. 70*)

“15. ... when the prosecution has closed its case, and the accused has been examined under Section 311 of the Code of Criminal Procedure, the Court was required to pass a judgment on the merit of the matter.”

14. In *Associated Cement Co. [Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687: 1998 SCC (Cri) 475]*, the purpose of inserting a provision like Section 256 of the Code was discussed, and in light thereof, in para 16, it was observed as under: (SCC p. 693)

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

After observing as above, it was held that where the complainant had already been examined as a witness in the case, it would not be appropriate for the Court to pass an order of acquittal merely on the non-appearance of the complainant. Thus, the order of acquittal was set aside, and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed.

15. In the instant case, we notice that there is a specific averment in the special leave petition(s) that the appellant had led its evidence in the case and thereafter had moved an application under Section 311 of the Code to summon and examine further witnesses. In Para 5(u), it is stated that the trial court as well as the High Court did not take into consideration that the complainant's cross-examination had been over in Complaint Case Nos. 621742/16, 621743/16 and 621744/16, and no cross-examination was sought in other cases. Rather, CW 1's cross-examination in the above three complaint cases was adopted. There appears to be no specific denial of the aforesaid factual position. However, we find that neither the High Court nor the learned Magistrate has taken notice of the aforesaid position. Both the courts below thus failed to consider whether, in the facts of the case under the proviso to sub-section (1) of Section 256, the court could proceed with the matter after dispensing with the attendance of the complainant."

19. Therefore, the learned Trial Court should not have dismissed the matter in the complainant's absence when his presence was not required.

20. Further, Section 279 of Bhartiya Nagrik Suraksha Sanhita (BNSS) provides that when the complainant does not appear, the Magistrate shall, after giving 30 days to the

complainant to be present, 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. The use of the term “shall” by the legislature shows that the legislature intended that the matter is not to be dismissed in default of the appearance of the complainant; rather, he has to be provided 30 days to appear before the Court, and in case he fails to do so, only then the complaint can be dismissed. The record maintained by the learned Trial Court does not show that this procedure was followed. Therefore, the order passed by the learned Trial Court cannot be sustained on this ground as well.

21. Therefore, the learned Trial Court had grossly erred in dismissing the complaint in default of the appearance of the complainant. Hence, the present appeal is allowed, and the order passed by the learned Trial Court is ordered to be set aside. The complaint is ordered to be restored to its original number. The parties through their learned counsel are directed to appear before learned Trial Court on 26.08.2026.

22. The record be returned forthwith to reach the Court well before the date fixed.

23. The appeal stands disposed of in above terms, so also the pending application(s) if any.

**(Rakesh Kainthla)**  
**Judge**

**10<sup>th</sup> August, 2026**  
(Nikita)