Ranjit Sarkar vs Ravi Ganesh Bharadwaj on 17 March, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

2025 INSC 415 REPOR

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO…… OF 2025
[ARISING OUT OF SLP (Crl.) NO. 205 OF 2025]

RANJIT SARKAR …APPELLANT

VS.

RAVI GANESH BHARDWAJ AND OTHERS …RESPONDEN

JUDGMENT

DIPANKAR DATTA, J.

1. Leave granted.

2. This appeal, inter alia, tasks us to interpret Section 256 of the Code of Criminal Procedure, 19731.

3. The appellant's son, holder of a degree of Doctor of Philosophy, died relatively young at the age of 36 years. Such unfortunate death was preceded by a traumatic fall that he had from a staircase on 10th July, Cr. PC 2014. The appellant had his son immediately admitted to a private hospital at Dum Dum, Kolkata. However, according to the appellant, it was due to the criminal medical negligence of the hospital and the doctors attending on his son that he could not survive the hemorrhage caused by such fall.

4. Apart from proceedings initiated elsewhere, the appellant lodged a complaint under Section 200, Cr. PC before the 4th Court of Judicial Magistrate, Barrackpore, North 24 Parganas, Kolkata2 alleging offence committed under Section 304-A, Indian penal Code, 18603. The Judicial Magistrate upon recording the statement of the appellant on oath, issued process under Section 204(1), Cr. PC against, inter alia, the respondents for alleged commission of offence under Section 304A, Indian Penal Code, 1860.

5. The respondents were arrayed as some of the accused in the complaint. Upon service of summons on them, the respondents approached the High Court at Calcutta4 by presenting an application under Section 482 of the Cr. PC5 seeking quashing of such summons. Upon hearing the petition, a learned Judge of the High Court stayed proceedings before the Judicial Magistrate vide order dated 18th September, 2018. Such order was extended from time to time. IPC High Court

6. In the third week of March, 2020, national lockdown was clamped owing to outbreak of COVID. The Standard Operating Procedure6 for functioning of courts in West Bengal during the pandemic, circulated vide notification dated 27th November, 2020 of the Registrar General of the High Court, inter alia, contained the following stipulation:

> "12. Ordinarily, matters should not be dismissed for default, both in the High Court and in the Subordinate Courts, except upon giving cogent reasons recording the deliberate avoidance or recalcitrance of the party or parties absent. Similarly, extreme caution should be exercised before passing any ex parte order".

7. Despite proceedings of the complaint having been stayed by the High Court and despite the subsistence of the SoP, duly notified, the Judicial Magistrate called the complaint case on 6th January, 2021. Despite repeated calls, the appellant had remained absent. He was not represented by his advocate either. Accordingly, the Judicial Magistrate required the appellant to show-cause why the complaint shall not be dismissed and, accordingly, fixed 16th April, 2021 for his response.

8. At the relevant time, the pandemic was still taking lives of old and young alike. The appellant, a septuagenarian, was attacked by the COVID virus and was under medical treatment owing to which he had not risked his life by appearing before the Judicial Magistrate. Thus, he was again found absent on 16th April, 2021. No steps having been taken by the appellant pursuant to the order dated 6th January, 2021, the Judicial SoP Magistrate dismissed the complaint for default vide order dated 16th April, 2021.

9. CRR No. 2327 of 2018 was thereafter listed on 9th September, 2021 before another learned Judge of the High Court. The appellant, though impleaded as an opposite party therein, was once again not present. The learned Judge, seized of the same, noted that the complaint had been dismissed for default by the Judicial Magistrate vide order dated 16th April, 2021, yet, proceeded to pass the following order:

> " *** So far as the provision of Criminal Procedure Code is concerned, the only section which is applicable will be Section 256 of the Code of Criminal Procedure in

> cases where the complainant is absent and the learned Magistrate is not willing to proceed with the case. The proper interpretation of application of the section obviously will be an order of acquittal in favour of the accused for non-appearance of the complainant. In view of the present position of the complaint case, no order is required to be passed in the revisional application being CRR 2327 of 2018. As such, the same is disposed of. Interim order, if any, is hereby vacated."

10. In the meanwhile, however, the appellant had moved the 2nd Court of the Additional District and Sessions Judge, Barrackpore, in revision7, questioning the orders of the Judicial Magistrate dated 6th January, 2021 and 16th April, 2021. Upon hearing the parties, the Sessions Judge proceeded to overrule the objection of the respondents that the revision was not maintainable and held that the appellant having sufficient cause for not presenting himself, he had set up a case for interference with the order dismissing the complaint for default. The Sessions Judge further held that the appellant had pursued the proper course of action by applying for revision against the order dated 16th April, 2021. It was also noted, having regard to the provisions contained in Section 256, Cr. PC, that since the respondents too were not present on 16th April, 2021, the Judicial Magistrate had not recorded an order of acquittal which could have been passed had such date been appointed for their appearance. The criminal revision was, accordingly, allowed on contest. The impugned orders dated 6th January, 2021 and 16th April, 2021 passed on Complaint Case No. 2 of 2017 were set aside, with the result that the said case was restored to its file and number. The parties were directed to appear before the Judicial Magistrate on 23rd December, 2022.

11. The revisional order dated 19th November, 2022 was next challenged by the respondents before the High Court in a fresh application under Section 482, Cr. PC8. By an order dated 15th July, 2024, another learned Judge of the High Court allowed the same. The revisional order was set aside with the result that the complaint stood closed. Relevant passages from the said order dated 15th July, 2024 of the learned Judge read as follows:

> "*** By an order passed on April 16, 2021 in C. Case No. 02 of 2017, the learned Judicial Magistrate, 4th Court, Barrackpore dismissed the complaint case for default since the complainant took no steps on the said date was found absent on repeated calls despite issuance of show cause upon him vide an order dated January 06, 2021. The complainant/private opposite party came up before this Court in a revisional application being CRR No. 2327 of 2018 challenging the said order and by an order passed on September 09, 2021, this Court observed as follows: -
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> 'The proper interpretation of application of the section obviously will be an order of acquittal in favour of the accused for non- appearance of the complainant.' This Court disposed of the revisional application on such score. Subsequently, orders of the learned Judicial Magistrate dated January 06, 2021 and April 06, 2021 were assailed before the learned Additional District and Sessions Judge, 2nd Court, Barrackpore by the complainant/ opposite party and by the order impugned dated November 19, 2022, the learned Sessions Judge allowed the revisional application upon setting aside the orders of the learned Magistrate with an observation that such order of

acquittal and dismissal can only be passed on the date or dates when those dates are fixed for appearance of the accused and hearing of any matter in the complaint case.

Learned counsel for the petitioner submits that after the observation made by this Court, the learned Sessions Judge had no authority to make any observation on the said issue in the revisional application filed before him and as such, the judgment needs to be quashed.

*** The primary issue which is required to be taken into consideration in the present application is whether after an observation made by this Court, the learned Sessions Judge had any authority to deal with the same issue and make any observation contrary to that of this Court.

This Court, vide an order passed on September 09, 2021, clearly observed that in view of Section 256 of the Code of Criminal Procedure, where the complainant is absent, the proper interpretation of the application of the section would be an order of acquittal in favour of the accused. In other words, this Court made a clear observation that the case ought not to have been dismissed for default but an order of acquittal in favour of the accused ought to have been made. The revisional application was disposed of since no order was required to be passed in view of the position of the complaint case.

In view of the above, this Court is inclined to hold that the learned District and Sessions Judge, 2nd Court, Barrackpore, in dealing with the merits of the order which was already dealt with by this Court in observing that the order should be read/interpreted as an order of acquittal in favour of the accused, has in fact sat in appeal over the order of this Court which is not enjoined in law. A decision arrived at by the Court could not have been reconsidered by the learned Judge.

***" (emphasis supplied)

12. The said order dated 15th July, 2024 is questioned by the appellant in this appeal.

13. We have heard the appellant in person and Mr. Mukherjee, learned senior counsel appearing for the respondents (being the petitioners before the High Court).

14. There can be and, in fact, exists no doubt that the High Court in passing the impugned order dated 15th July, 2024 has occasioned a grave failure of justice.

15. The impugned order of the learned Judge reveals a narrow focus stemming from a one-track mind. Why the appellant could not appear before the Judicial Magistrate on 6th January, 2021 and 16th April, 2021 and whether the Judicial Magistrate could have called the complaint case for ascertaining whether cause was shown, had not been considered at all. First of all, COVID restrictions being in place and in terms of the SoP framed by the High Court, the Judicial Magistrate

could not have dismissed the complaint for default on 16th April, 2021 without recording a satisfaction that either the appellant was deliberately avoiding participation in the proceedings or that his recalcitrance was such, which left the Judicial Magistrate with no other option but to dismiss the complaint for default. Secondly, the proceedings before the Judicial Magistrate having been stayed by the High Court by interim orders passed from time to time, the Judicial Magistrate lacked the jurisdiction to pass any order on the complaint case till such time the stay was lifted. Since the Judicial Magistrate could not have dismissed the complaint for default on 16th April, 2021 in view of the above-referred factors, by reason of interference with the revisional order of the Sessions Judge under challenge in CRR No. 359 of 2023, the learned Judge has validated such illegal order of dismissal dated 16th April, 2021 resulting in the appellant's complaint being closed without just reason. This is the first ground on which we propose to interfere with the impugned order.

16. Besides that, the learned Judge proceeded on a total misconception of the factual position. Bare perusal of the impugned order, as extracted, would reveal that the learned Judge was anchored in the belief that it was the appellant who had approached the High Court by filing CRR No. 2327 of 2018. As noticed, CRR No. 2327 of 2018 was at the instance of the respondents. The extent of influence that such factual misconception had on the learned Judge's judicial mind, adversely affecting the interest of the appellant, is self-evident. The entire focus seems to have shifted to answer what the learned Judge felt was "the primary issue", that is, whether the Sessions Judge could have dealt with the issue (which had earlier been dealt with by the High Court while disposing of CRR No. 2327 of 2018) and interfere, in exercise of revisional powers, taking a view contrary to that taken by the High Court on the appellant's petition. Viewed in the conspectus of the issues arising for decision before the High Court, the error of understanding the facts is unacceptable.

17. The next error that the learned Judge committed arises from a failure to consider the law in the proper perspective as well as the weight of the observation made by the High Court in the earlier order dated 9 th September, 2021. The complaint case was listed on 16th April, 2021 before the Judicial Magistrate for a limited purpose, that is, cause to be shown by the appellant as to why for his absence the complaint should not be dismissed for default. On that date, even the respondents were absent. Overlooking these, the learned Judge placed undue reliance on the order dated 9th September, 2021 as if the observation contained therein on interpretation of Section 256, Cr. PC was the final word and binding on all notwithstanding the remedies that law provided to the appellant to challenge the order of dismissal for default. The law permitted the appellant to question the order of dismissal dated 16th April, 2021, which he did question. We are minded to observe, in the light of the subsequent judicial proceedings and orders passed therein, that the learned Judge (who had the occasion to consider CRR No. 2327 of 2018) would have done better if CRR No. 2327 of 2018 were disposed of merely recording that nothing survived for decision on the challenge to the summons in view of dismissal of the complaint for default; instead, the learned Judge went on to make an observation with regard to what would be the proper interpretation of Section 256, Cr. PC qua the outcome of the complaint case in favour of the accused, arising out of non- appearance of the complainant which, apart from being wholly unwarranted, has resulted in unnecessary proceedings which were wholly avoidable. Even otherwise, such observation was patently incorrect since bare reading of Section 256, Cr. PC, having regard to the attending facts and circumstances, did not entail

an acquittal for the respondents, as we presently propose to demonstrate. Significantly, the learned Judge seized of CRR No. 359 of 2023 interfered with the impugned revisional order merely because of such previous observation without any proper application of mind.

18. Chapter XX of the Cr. PC is titled TRIAL OF SUMMONS-CASES BY MAGISTRATES. It has 8 (eight) sections from Section 251 to 259. Section 254 lays down the procedure to be followed if conviction is not recorded in terms of Sections 252 and 253. An acquittal can be recorded by a magistrate under Section 255, Cr. PC, if considering the evidence, it is found that the accused is not guilty. An acquittal can also be recorded by the magistrate under Section 256, Cr. PC, without considering the evidence on record, in the stated situations. Section 256 of the Cr. PC reads as follows:

> "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:
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> 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".

19. What, therefore, assumes importance for invoking Section 256, Cr. PC is the purpose for which the case is fixed. If the date is not appointed for appearance of the accused but for some other purpose, like in the present case, acquittal of the accused does not necessarily follow as the logical result of absence of the complainant. Also, the words "on any day subsequent thereto" must be understood in reference to the words preceding, namely, "the day appointed for the appearance of the accused". Say, for instance, if a date is fixed by the magistrate for bringing an order from a superior court or for showing cause why an order of dismissal should not be passed for continuous absence of the complainant or for producing any material, which is not intrinsically connected with any step towards progress of the lis, and the complainant is found to be absent, a dismissal of the complaint can be ordered but the provision for acquitting the accused may not be attracted unless it happens to be the date appointed for appearance of the accused and they do appear personally or through an advocate; also, without the magistrate recording a clear acquittal along with the order of dismissal of the complaint, acquittal need not be read into every such order of dismissal of a complaint owing to absence of the complainant.

20. From the tenor of the order dated 6th January, 2021, it is clear that 16th April, 2021 was not the day appointed for appearance of the respondents. It was the date on which the appellant was required to show cause. Had COVID restrictions not been in place and in otherwise normal

circumstances, if the appellant remained absent on the date appointed for appearance of the respondents, without showing sufficient cause, the Judicial Magistrate in terms of Section 256, Cr. PC would have been justified in recording an order of acquittal of the respondents had they been present unless, for some reason, he intended to adjourn the hearing to some other day. However, the jurisdictional facts for recording an acquittal under Section 256, Cr. PC were not satisfied in the present case, firstly, because it was not the appointed day for appearance of the respondents and secondly, they were also not present. Owing to the absence of the appellant and owing to his omission to respond to the show-cause, the Judicial Magistrate could, at best, be justified in dismissing the complaint for default, which he did but which he could not have done having regard to the facts of the notification dated 27th November, 2020 being in force on 16th April, 2021 and operation of the stay order granted by the High Court on 18th September, 2018, since extended from time to time.

21. The observation made by the learned Judge seized of CRR No. 2327 of 2018 based on his interpretation of Section 256, Cr. PC being flawed, the other learned Judge ought not to have made such flawed observation as the main plank for allowing CRR No. 359 of 2023. It was absolutely incorrect on the part of the learned Judge to hold that the Sessions Judge was sitting in appeal over the order of the High Court. The Sessions Judge had duly held the revision petition to be maintainable and had assigned sufficient reason why the complaint should not have been dismissed based on a correct interpretation of Section 256, Cr. PC.

22. Even otherwise, both the learned Judges ought to have realized that the appellant did have multiple remedies available in law to pursue for laying a challenge to the order dated 16th April, 2021 and which, in fact, he did pursue as the correct course of action; and, indeed, succeeded in restoration of his complaint. Interference, therefore, was not called for.

23. For the reasons aforesaid, we hold the impugned order dated 15th July, 2024 allowing CRR No. 359 of 2023 to be unsustainable in law. Consequently, it is set aside. As a sequitur, Complaint Case No. 2 of 2017 shall stand revived on the file of the Judicial Magistrate and be restored to its original file and number.

24. Considering the fact that CRR No. 2327 of 2018 had been disposed of by the order dated 9th September, 2021 in view of dismissal of the complaint case for default, we also set aside the order dated 9 th September, 2021 of disposal of CRR No. 2327 of 2018 in exercise of power conferred by Article 142 of the Constitution of India and revive the same by restoring it on the file of the High Court.

25. However, the High Court shall first decide CRR No. 2327 of 2018, as early as possible, preferably within six months from date of receipt of a copy of this order. The parties are directed to appear before the roster bench of the High Court on 17th April, 2025, whereafter the proceedings may be taken to its logical conclusion in accordance with law. Depending on the result of CRR No. 2327 of 2018, the complaint case shall also be taken to its logical conclusion in accordance with law, as early as possible.

26. The appeal stands allowed to the extent mentioned above. Pending application(s), if any, stand disposed of.

27. We clarify not having examined the rival contentions on its merits.

28. Registry is directed to communicate this order to the Registrar General of the High Court, forthwith, for facilitating early disposal of CRR No. 2327 of 2018.

.....J. (DIPANKAR DATTA) .....J. (MANMOHAN) NEW DELHI;

MARCH 17, 2025.