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that the



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If, however, the complainant is represented by a Pleader or by an Officer conducting the prosecution, or if the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. The above provisions also apply to cases where the non-appearance of the complainant is due to his death. On the question whether the complainant's death ends the proceedings in a summons-case, the Law Commission observed that, as a matter of policy, the answer should depend on the nature of the case and the state of the proceedings at which his death occurs. The Commission further commented as follows: " It is impracticable to detail the various situations that may arise and the considerations that may have to be weighed. We think, in the circumstances, that the decision should be left to the judicial discretion of the Court, and the legal provision need only be that death and absence stand on the same footing. We trust this will in practice work satisfactorily.

" It will be seen that S. 256 of the new Code seeks to achieve this objective. In one case, on the date of the arguments, both the complainant and his counsel remained absent and the accused was acquitted. The Madras High Court upheld the acquittal, on the ground of non-appearance of the complainant. (Ramaswami v. Gopalan, 1983 Cr. L. J.

NOC 135) An order under S. 256 acquitting an accused is a final order of acquittal, which operates as a bar (under S. 300) to another trial to the accused for the same offence. (Rasik Tatma v. Bhagwat Tanti,—1958 37 Pat. 23) The powers under this section should, therefore, be exercised

reasonably, and only in cases where the complainant has failed to appear without any just cause.

(Mahesh Prasad v. Mahavir Singh,—1960 A. I. R. All. 507) The Rajasthan High Court has even gone a step further and observed that orders under this section should not be passed in the early hours of the day, and the Magistrate should wait for a reasonable time for the appearance of the complainant.

(J. George v. Premi Solomon,—1963 13 Raj. 785) The Allahabad High Court has held that an order of acquittal passed on the date not fixed for hearing, or when the complainant had no notice of the adjourned date, is a nullity.

(Pritam Singh,—1969 Cr. L. J. 1329)