

¹[Provided further that nothing in this section shall apply where the offence of which the accused is charged is either cognizable or non-compoundable.]

COMMENTARY

Dismissal of complaint. Complaint would not be dismissed in absence of complainant. [PLJ 2004 Cr.C. (Lah) 164]. Dismissal of complaint for non-prosecution Federal Shariat Court observed that complaint was filed being cognizable and non-compoundable therefore it could not be dismissed for non-prosecution. [2006 PCr.LJ 1101 (FSC)]. Complaint can be dismissed after summoning due to no appearance of the complainant. [2012 PCr.LJ 581]

Non-appearance of complainant. Non-appearance of complainant may entail dismissal of complaint. [PLD 2002 Lah. 341]. Provision of second proviso to Section 247 providing that no complaint to be dismissed in absence of complainant. restored. [2003 YLR 2211].

Revision/Appeal. Dismissal of private complaint. Restoration petition also dismissed. Order though appealable but revision also competent in appropriate cases. [2006 PCr.LJ 1101 (FSC)].

Scope and extent. If complainant is not interested in the case either because the matter has been compromised or he does not want to proceed with the case or remains absent for any other reason, Magistrate is empowered to acquit the accused. [1990 PCr.LJ 1699]. Object to prevent complainant from adopting dilatory tactics. [1998 PCr.LJ 1909]. Provision of section 247 Cr.P.C shall not applicable in cognizable and non compoundable offences. [PLD 1999 Lah 400; 1990 PCr.LJ 1699]

Second proviso. Complaint is not liable to be dismissed nor the accused is to be acquitted due to non-appearance of the complainant. [PLD 1998 Quetta 37]. Second proviso does not apply where offence charged is either cognizable or non-compoundable. [1993 SCMR 1902]. Such complaint cannot be dismissed for want of prosecution. [NLR 1996 (Cr.) 44; 1993 PCr.LJ 865].

248. Withdrawal of complaint.--If a complainant, at any time before a final order is passed in any case under this Chapter satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

COMMENTARY

Withdrawal of complaint results in acquittal of accused barring retrial. [PLJ 1993 (Cr.) Lahore 16]. Power to withdraw a complaint is only with complainant subject to permission of Court and is not an automatic affair, Court can even refuse such withdrawal. [PLJ 1998 Lah. 907]. Complaint dismissed for non prosecution, provision of Section 248 would not be attracted. [PLD 2002 SC 687]. After withdrawal, acquittal no complaint. [2011 PCr.LJ 936]. Government has no authority to withdraw cases pending against respondents before Special Judge, as State is not complainant in this case. [PLJ 1998 Lah 907]

Withdrawal is unilateral act on the part of complainant. Neither a valid compromise had taken place nor were the provisions of Section 248 of, Cr.P.C. attracted. so as to attract bar contained in Section 403 of, Cr.P.C. and Art. 13 of the Constitution. [PLJ 2007 Cr.C. (Lah.) 1038].

249. Power to stop proceedings when no complainant.--In any case instituted otherwise than upon complaint, a Magistrate of the First Class or with the previous sanction of the Sessions Judge, ²[...] may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

1. Inserted by Act, XXI of 1976.

2. Words "in the case of"