

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 707 OF 2015

Laxminarayan s/o Namdeo Zalwar,
Age: 62 years, Occ: Agri.,
R/o. Ajanta, Tal. Sillod,
Dist. Aurangabad.

...Petitioner

versus

Dr. Nikhil s/o Govindsing Rajput,
Age: 35 years, Occ: Medical Practitioner,
R/o. Tilak Nagar, Jalgaon Road,
Sillod, Tq. Sillod,
Dist. Aurangabad.

...Respondents

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Mr. D.P. Palodkar, Advocate for petitioner
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CORAM : N.W. SAMBRE, J.

DATE : 3rd MAY, 2016

ORAL ORDER :

Heard Mr. Palodkar, learned Counsel for the petitioner.

The petitioner, complainant in Summary Criminal Case No. 248 of 2011 for an offence punishable under Section 138 of the Negotiable Instruments Act, has suffered an order of dismissal of the complaint, for want of prosecution under Section 203 of the Code of Criminal Procedure passed by learned Judicial Magistrate, First Class, Sillod on 22/04/2013, which came to be confirmed in Criminal Revision No. 266 of 2013, at the behest of the petitioner, on 19/03/2015, by learned Additional Sessions Judge, Aurangabad.

2. While trying to make out a case for setting aside both the orders, learned Counsel for the petitioner, fairly concedes that if there are defaults on the part of present petitioner in not appearing, same are not deliberate or intentional. He would submit that after presentation of the complaint, there were various proceedings which are taken up to the Supreme Court in the matter of another first information report for an offence punishable under Section 420 of the Indian Penal Code out of the same transaction and as such, the petitioner was under bonafide impression that proceedings under Section 138 of the Negotiable Instruments Act are not required to be prosecuted for the time being. He would submit that since the process is not issued against accused, no prejudice is caused to the accused and as such, by putting the petitioner to certain strict conditions, this Court may interfere by setting aside the orders impugned.

3. With the assistance, I have perused the proceedings as are placed before this Court. It is to be noted that complaint under Section 138 of the Negotiable Instruments Act came to be moved in the year 2011. After filing of the said complaint, the petitioner has chosen not to appear before learned Magistrate at least once for recording the verification pursuant to the provisions of Section 200 of

the Code of Criminal Procedure. Thereafter, learned Magistrate, having taken note of consistent non appearance of present petitioner-complainant, posted the matter for dismissal since 28-06/2012 and lastly by an order impugned dated 22/04/2013 dismissed the complaint for want of prosecution.

4. It is further required to be noted that in parallel proceedings which are initiated for an offence punishable under Section 420 of the Indian Penal Code, which was subject matter of challenge before this Court in Writ Petition No.807 of 2011, this Court has though granted interim relief, has clarified that proceedings under Section 138 of the Negotiable Instruments Act, which are separately filed should go on, as the same are not stayed. The order dated 13/02/2012 as narrated above came to be passed in Criminal Writ Petition No. 807 of 2011 after hearing present petitioner, who is respondent No.1 therein.

5. In this background, since the complaint is not attended by the petitioner since 2011 i.e. from the date of its filing, in my opinion, learned Magistrate was right in dismissing the same. The revisional Court, being alive of the above referred conduct of the petitioner and proceedings which are pending for an offence punishable under Section 420 of the Indian Penal Code

independently, has proceeded to dismiss the revision.

6. Having observed herein above as regards conduct of the present petitioner in pursuing the complaint case and the fact that independent proceedings under Section 420 of the Indian Penal Code are pending, in my opinion, no case for interference by this Court is made out. The criminal writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]