

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APPA) NO. 1129 OF 2017
AND
CRIMINAL APPEAL NO. 668 OF 2018**

Naresh Vitthalrao Halmare,
NK Realtors & Infrastructure Pvt. Ltd.
Through its Director Shri Halmare
Having its office/ Shop No.B/1B,
Sidhesh Sai Krupa Besa,Nagpur-34.

.... **APPELLANT.**

// VERSUS //

Prabhakar S/o.Mahadeorao Meshram,
aged about 51 years, Occ.: Not Known,
R/o. Plot No.18, Gadge Nagar,
Ramna Maroti, Nagpur.

.... **RESPONDENT.**

Shri Sunil Lacharwar, Advocate for Appellant.
Shri K.J.Rawandhe, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : OCTOBER 19, 2018.

CRI.APPLN.NO.1129/2017

Heard.

The complainant has filed appeal to challenge the order passed by the learned Magistrate by which the complaint filed by him under Section 138 of the Negotiable Instruments Act, 1881 is dismissed for want of prosecution.

Considering the facts of the case, I am satisfied that the applicant is entitled for grant of leave to file appeal.

Leave granted accordingly.

CRI. APPEAL NO. 668/2018.

ORAL JUDGMENT :

1. Appeal is taken up for further consideration/hearing.
2. In view of the nature of controversy and as I find that the record and proceedings is not required as the appellant has placed on record copy of Roznama which is relevant, the appeal is taken up for hearing.
3. The complaint filed by the appellant seeking conviction of the respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is dismissed for want of prosecution and the accused is acquitted. The learned Magistrate has recorded that Roznama shows that the complainant is not vigilant in prosecuting the matter and he has not complied with various orders passed by the Court on the earlier dates.

4. The learned advocate for the respondent/ accused has submitted that the grounds taken by the appellant in the memo of appeal before this Court are also not in consonance with the facts revealed on record of the trial Court. It is submitted that the appellant and his advocate were consistently absent and therefore, the learned Magistrate has rightly dismissed the complaint for want of prosecution and the impugned order does not require any interference.

5. The submission made on behalf of the respondent/accused carries force and it cannot be said that the learned Magistrate has committed any error of jurisdiction. However, in my view, the ends of justice would be sub-served if opportunity is given to the complainant to prosecute the matter on merits.

6. Hence, the following order :

- i) The impugned order is set aside.
- ii) Summary Criminal Case No.12040 of 2016 filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 is restored on the file of Judicial Magistrate First Class, Court No.27, Nagpur.
- iii) The appellant and the respondent shall attend the Court of Judicial Magistrate First Class Court No.27, Nagpur on 10th December 2018 and abide by further orders in the matter.

- iv) The learned Magistrate shall dispose the complaint on merits according to law.

The appeal is **allowed** in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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