

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

CRIMINAL APPEAL NO.48 OF 2019

Dipali Enterprises, Nilanga,
Prop. Girish S/o. Manoharrao Kanade,
Age : 31 years, Occupation : Business,
R/o. : Nilanga, Taluka Nilanga,
District Latur.

.. Applicant

Versus

Sanjay s/o. Digambar Hadole,
Age : 52 years, Occupation : Service,
Headmaster Z. P. Primary School,
Dhanegaon, Taluka Deoni,
District Latur.

.. Respondent

...
Mr. Vishwajit R. Jain (Kamboj), Advocate for Appellant.
Mr. P. G. Rodge, Advocate for Respondent.
...

CORAM : K.K. SONAWANE, J.

DATED : 15th APRIL, 2019

JUDGMENT :-

Heard. **Admit.** The present appeal is taken up for final hearing on merit with the consent of both sides.

2. The appellant-complainant preferred the present appeal by invoking the remedy under Section 378 of the Code of Criminal Procedure, 1973, and agitated the validity and legality of the impugned order passed by the learned Judicial Magistrate, First Class, Nilanga, dated 07th April, 2016, for acquittal of the respondent-accused in the proceedings of SCC No. 565 of 2012, filed under Section 138 of the Negotiable Instruments Act, 1881 (N.I.Act).

3. The factual matrix of the matter in nutshell is that, the appellant was doing the business of building materials. The respondent-accused came in contact with the appellant through common friends. The accused was in employment as Headmaster in the educational institution. Being cordial relation, the appellant allowed respondent-accused to purchase building materials worth of Rs.1,65,400/- for the construction of school. But, thereafter, no response from the respondent-accused for payment of cost of building material. The appellant insisted for price of building material. Eventually, respondent-accused issued a cheque of Rs.1,65,400/- in favour of appellant-complainant. But, it was dishonoured for lack of funds. The statutory notice was issued to the respondent, but, there was no response. At last, the appellant initiated penal action against the respondent-accused under Section 138 of N.I.Act bearing SCC No. 565 of 2012. The learned Magistrate issued process against respondent-accused. Thereafter, the matter was listed for further process. The learned Magistrate recorded the particulars of offence by explaining the accusation to the accused on 26-04-2013 and matter was kept for adducing the evidence on behalf of complainant. However, since 17-08-2015, there was no progress into the matter for evidence on behalf of appellant-complainant. Eventually, the circumstances constrained the learned Magistrate to dismiss the complaint for want of prosecution and passed the impugned order, which is the subject matter of present appeal.

4. Learned counsel for the appellant fervidly contends that the impugned order of dismissal of the complaint for want of

prosecution was erroneously, illegal and not within the purview of law. The appellant-complainant could not attend the proceedings for lack of communication from his Advocate. Learned counsel contends that the appellant-complainant should not be suffered due to the mistake committed on the part of his counsel. The complainant has an merit in the proceedings. The respondent-accused committed mischief by issuing the cheque without sufficient balance in his bank account. Therefore, learned counsel for the appellant requested to quash and set-aside the impugned order and complaint be allowed to restore at it's original stage.

5. Having given anxious consideration to the rival submission, I do not find any substance in the contentions propounded on behalf of appellant. It is to be noted that the appellant initiated the penal proceedings against the respondent-accused in the year 2012. After compliance of procedural formalities of recording plea, etc., the proceedings was on the cause list for recording evidence of complainant since year 2013, but, there was no progress into the matter. The circumstances on record constrained the learned Magistrate to pass the order of dismissal of complaint for want of prosecution, which is reproduced as below :-

"In view of the letter of the Hon'ble High Court No. : B(Gen)-1001/2016/444 dated 30-03-2016 and circulated by Hon'ble District Court, Latur Letter No. 5411/2016 dated 04/04/2016 and letter of Maharashtra State Legal Authority No. MSLSA/2016/ 519 dated 23/03/2016, this case is identified for keeping in Special Drive.

Matter called out repeatedly. Complainant and his counsel absent. It is pending for evidence of complainant since 17/8/15. Complainant sought adjournments on 3/9/15, 6/10/15, 22/3/16 by filing specific application. Particulars of offence recorded on 26/04/13. Record shows that complainant is not interested in the proceeding. At this stage no need to remain present the accused. Presence of his counsel is sufficient hence on 14/3/16, 22/3/16 and 1/4/16 it was kept for dismissal order. In spite of sufficient opportunity complainant failed to lead evidence and as it is kept in special drive, complainant has filed application only to avail adjournment. It is also rejected. Hence, I have no alternative but to dismiss the complaint.

Order

1. *Complaint stands dismissed for want of prosecution.*
2. *Accused stand acquitted. “*

6. At this stage, I find it just and proper to make a reference of the provision of Section 143(2) and (3) of the N.I.Act, which reads as under :-

“143. Power of Court to try cases summarily. -

(1) xx xx xx xx

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.”

7. It is evident that the aforesaid provision of Sub-sections (2) and (3) of Section 143 of N.I.Act makes it mandatory that the trial of the summary proceedings filed under Section 138 of N.I.Act, is essential to be continued from day to day until its conclusion, unless the court finds the adjournment of the trial beyond following day to be necessary for the reasons to be recorded. It has also mandate of the law that there shall be endeavour to conclude the trial within six months from the date of filing of the complaint.

8. In the matter in hand, it appears that the proceedings filed on behalf of appellant-complainant under Section 138 of N.I.Act was pending since year 2012. The matter came to be adjourned time and again on one or other pretext at the behest of complainant. Eventually, the learned trial Court listed the present matter on 14-03-2016, 22-03-2016 and 01-04-2016 for dismissal of the complaint. Despite the warning of dismissal of matter on particular dates, the appellant-complainant did not take precaution with due diligence to adduce evidence into the matter, nor the applicant-complainant secure his presence before the Court for progress into the matter. The lethargic and slipshod attitude on the part of complainant constrained the learned Magistrate to take recourse of special drive, but it did not evoke result. At last, the learned Magistrate took the drastic steps to dismiss the complaint for want of prosecution on 7th April, 2016.

9. It is to be noted that conduct and demeanor of the appellant-applicant to protract the matter without any reasonable cause is highly disapprovable and deprecated one. It is to be reiterated that the proceedings under Section 138 of N.I.Act being a summary proceedings required to be dealt with expeditiously for its adjudication

on merit preferable within six months from its presentation before the Court. But, in the present matter, the appellant-complainant succeeded to lull the proceedings since year 2012 to 2016. In such circumstances, I am not inclined to extend any sort of latitude in favour of appellant-complainant. The lackadaisical and negligent conduct, and, demeanor of the appellant while attending the proceedings before the learned trial Court, do not permit to adopt liberal approach for restoration of proceedings after lag of colossal period since its institution in the year 2012.

10. During the course of hearing of the appeal, there were endeavour for amicable settlement of dispute in between the parties, but, the efforts found unavailing. Be that as it may, the complaint filed in the year 2012 can not be reopened after efflux of colossal period in the year 2019. There were no any reasonable cause put-forth on behalf of appellant-accused for restoration of proceedings at it's original stage. It would preposterous to appreciate the contention of the appellant that he could not attend the matter before the learned trial Court for lack of communication. The attempt to blame the counsel appearing for the appellant can not be an reasonable ground to cause inconvenience to the respondent-accused by reopening of the old proceedings after colossal period. In such peculiar circumstances, there is no scope for liberal approach to be adopted in favour of appellant-complainant. Hence, the appeal, being devoid of merit, stands dismissed. No order as to the costs.

[K. K. SONAWANE, J.]