

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

CRIMINAL APPLICATION (APPA) NO.456/2018

Smt. Shashiprabha w/o Anilkumar Singh .vs. Sheshnath Singh Jageshwar
Singh Thakur and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. V. K. Paliwal, Advocate for applicant.

Mrs. H. S. Singh, Advocate for non applicant.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 28, 2019

This is an application along with appeal challenging order dated 05.03.2018 passed by learned Judicial Magistrate First Class, Nagpur, whereby the Court below exercised the powers under Section 256 of the Code of Criminal Procedure and acquitted the non applicant and disposed of criminal complaint case filed by the present applicant.

I have heard Mr. V. K. Paliwal, learned counsel for applicant and Mrs. H. S. Singh, learned counsel for non applicant no.1.

Applicant is original complainant. She filed a complaint for an offence punishable under Section 138 of the Negotiable Instruments Act. In view of directions given by this Court, applicant along with Pursis Stamp No.1043/2019 has filed a photocopy of roznama/order sheet of Summary Criminal Case No. 12457/2016.

Perusal of aforesaid order sheet shows that the complaint was filed in the Court of Additional Chief Judicial Magistrate, Nagpur by applicant on 04.08.2016. The order sheet shows that learned Chief Juridical Magistrate allotted the said case on the file of Judicial Magistrate First Class (24th Court). Thereafter, the complaint was on the file of learned Magistrate. Order sheet shows that the complainant and his counsel were absent on three dates consecutively i.e. on 06.09.2016, 26.12.2016 and 08.03.2017. Consequently, no verification statement of complainant could be recorded.

Roznama further reveals that on 03.05.2017, complainant and her counsel appeared and her verification statement was recorded and the matter was kept on 07.07.2017. On the said day, complainant and her counsel were absent and it appears that summons were also served upon the non applicant. Thereafter, case was fixed on 14.08.2017. However, though on the said day, learned Presiding Officer of the Court was on leave, both the parties were absent and therefore case was fixed for taking further steps on behalf of the complainant and it was fixed on 26.09.2017. On 26.09.2017, complainant and counsel were absent and another chance was given for taking further steps on behalf of the complainant and the matter was fixed on 08.12.2017. On 08.12.2017 also complainant and his counsel were absent and matter was kept on 05.03.2018. On 05.03.2018, ultimately when the learned Judge

found that the complainant is not appearing nor her counsel is appearing, passed the impugned order.

It is the submission of Mr.Paliwal, learned counsel appearing for the applicant that as complainant was residing outstation, she was unable to attend the proceedings. This particular submission, in my view, cannot be accepted for the simple reason that she was represented by her advocate. Every time it was open for the learned counsel to file an application for exemption of personal appearance of the complainant by citing a good reason. It appears from the order that both complainant and her counsel were not diligent in prosecuting the complaint.

No exception can be taken with the impugned order. Consequently, the application is rejected and the appeal is also dismissed.

JUDGE