

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

CRIMINAL APPLICATION [APPA] NO. 435 OF 2019.

Atique Parvez Mohd. Rafique

-VERSUS-

Arti Sachin Shinde.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri J.B. Gandhi, Advocate for the Appellant.

CORAM : VINAY JOSHI, J.

DATE : JANUARY 09, 2020.

Heard finally.

2. This is an appeal of original complainant challenging the order of dismissal of a private complaint bearing S.C.C.No.167/2017, by the learned Magistrate vide order dated 18.02.2019.

3. It is urged that on most of the dates, the Advocate appearing for the complainant was present as well as on the crucial date i.e. 02.01.2019, the complainant himself was present,

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but, the Court without granting any opportunity, has dismissed the complaint noting that the steps are not taken.

4. The impugned order discloses that on 06.12.2018, the complainant has not taken steps and therefore, the matter was kept by the Magistrate for dismissal on 02.01.2019 by passing a specific order on Exh.1. Thereafter, on 02.01.2019, the complainant and his Advocate remained absent, hence, the matter was again adjourned to 18.02.2019 and on that date none was present for the complainant, hence, the learned Magistrate by passing the impugned order dismissed the complaint.

5. The complaint was for dishonour of cheque amounting to Rs. 10,460/-. The relevant portion of the order sheet is produced on record. It reveals that on 06.12.2018, complainant was absent, but, his Advocate was present. However, as no steps were taken, the Magistrate has passed a specific order on Exh.1, and posted the matter

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for dismissal on 02.01.2019. It indicates that though the Advocate was present on 06.12.2018, he took no steps, which resulted into passing an order adjourning the matter to further date.

6. Roznama dated 02.01.2019 indicates that neither the complainant nor his Advocate was present, hence, though the matter was kept for dismissal, again the Magistrate postponed the matter for dismissal on 18.02.2019. It is argued that on 02.01.2019, the complainant was personally present and requested the Magistrate to adjourn the matter, since his Advocate has gone to Khamgaon. Infact this submission is against the notings in Roznama, but, assuming it to be correct, on that date the Magistrate has not passed any order, but, the matter was adjourned under the caption “for dismissal”. It means that, as per the contention of the complainant he was aware on 02.01.2019 itself that the matter is postponed for 18.01.2019, hence, positive steps from the side of the complainant was expected.

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7. The impugned order discloses that on 18.02.2019 till 5.30 p.m., the Magistrate has waited for compliance and ultimately as nobody was present, the matter came to be dismissed. The entire record indicates that sufficient opportunity was given to the complainant. Apparently, the complainant was negligent in prosecuting the case. By passing specific order the matter was kept under the caption of dismissal, still no steps were taken. Sufficient opportunity was granted, hence, the impugned order is well justified. In view of the circumstances, appeal carries no merit and the same is dismissed. No costs.

JUDGE

Rgd.