

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

**CRIMINAL APPEAL NO. 180 OF 2020.**

Prem s/o Sukhlal Gaur,  
Aged about 40 years, Occupation  
Business, resident of Near  
Mahatama Fule Bazar, Lal School,  
Bajeriya, Nagpur, Taluq and  
District Nagpur.

... **APPELLANT.**

**VERSUS**

Shri Ravi L. Renkuntalwar,  
Aged about 40 years,  
Occupation – Business, resident of  
Plot No.34/1, Near Shastri School,  
Sindhi Colony, Clerk Town,  
Mekosabagh, Nagpur, Taluq  
and District Nagpur.

... **RESPONDENT.**

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Shri R.M. Patwardhan, Advocate for the Appellant.  
Shri M. Ateeque, Advocate for the Respondent.  
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**CORAM : VINAY JOSHI, J.**  
**DATE : AUGUST 18, 2021.**

**ORAL JUDGMENT :**

**Admit.** Heard finally by consent of the learned Counsel appearing for the parties.

2. The appellant is challenging the order of acquittal passed by the trial Court vide order dated 21.04.2018. Initially, the appellant has filed Summary Criminal Case No. 5246/2017, against the respondent for allegedly committing an offence punishable under Section 138 of the Negotiable Instruments Act. The trial Court has disposed the complaint on the ground that the appellant has failed to take steps to serve the accused, and in turn acquitted the accused in terms of Section 256 of the Code of Criminal Procedure.

3. The learned Counsel for the respondent has objected the appeal by contending that despite sufficient opportunity, the appellant had not taken steps for service upon the respondent/accused.

4. With assistance of both the learned Counsel, the entire record and proceedings was gone into. It reveals from the record that after institution of the complaint, the trial Court took cognizance and was

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pleased to issue process against the respondent/ accused. It was followed by issuance of summons to the accused and the summon was made returnable on 31.07.2017. On the returnable date, it was reported that the summon had returned unserved, hence, the matter was posted for taking steps on 07.10.2017. On that date itself the trial Court has passed an order on Exh.1 directing the appellant to take steps. The said order bears reference that the complainant is continuously absent and is not taking steps against the accused. Contextually, record is produced from which it is revealed that in a mechanical manner such type of orders are passed.

5. Record indicates that thereafter, the matter was adjourned for taking steps on 14.12.2017, 07.02.2018, 23.03.2018 and 21.04.2018. Since steps were not taken on 21.04.2018, the matter came to be disposed of by impugned order.

6. The learned Counsel for the appellant would submit that the appellant was not informed by his Advocate about necessity to take steps. According to him, due to lapses on the part of his Advocate, the appellant should not be made to suffer.

7. It reveals that on return of summon unserved, the matter was disposed of barely within a period of 6 months. True, there are some lapses on the part of the appellant, however, on technicalities, his case should not have been thrown out of the Court. Pertinent to note that till that date even the accused had not remained present in the Court, since he was not at all served. In view of that, interest of justice would be sub-served if one more opportunity is given to the appellant to go on with the matter with certain directions. Hence, the following order.

### **ORDER**

- (i) The Appeal stands allowed.
- (ii) The impugned order dated 21.04.2018 passed by the 28<sup>th</sup> Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Special Court for 138 N.I. Act, Nagpur in Summary Criminal Case No.5246/2017 is hereby quashed and set aside.
- (iii) Summary Criminal Case No.5246/2017 is restored on the file of the concerned Magistrate at the same stage.
- (iv) Respondent / accused is directed to appear suo-motu in the trial Court on 06.09.2021. The appellant shall file

his evidence on affidavit on the said date only.

- (v) The appellant shall also pay costs of Rs.2000/- to the respondent / accused on 06.09.2021 before the Trial Court.

**JUDGE**

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