

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

CRIMINAL APPEAL NO. 363/2021

Bharat Madhukarrao Chunade
Aged about 39 years, Occ. Business
Prop. Of Chunada Jewellers, Malipura,
Mandura, Tq. Nandura, Dist. Buldana,
R/o. Malipura, Nandura, Tq. Nandura,
Dist. Buldana.

.... APPELLANT
(Ori. Complainant)

// VERSUS //

Ramesh Narayan Sushir (Guruji)
Aged about 55 years, Occ. Service,
R/o. "Dhangarpura" Shemba,
Tq. Nandura, Dist. Buldana.

.... RESPONDENT
(Accused)

Shri R. D. Karode, Advocate for appellant.
None present for respondent

CORAM : VINAY JOSHI, J.
DATED : 14.09.2021

JUDGMENT

Heard.

2. **Admit.**

3. The appeal is taken for final hearing at the stage of grant of leave and admission. Despite clear understanding given to the respondent vide order dated 20.08.2021, no one is present on his behalf.

4. The appellant has filed private complaint bearing Summary Complaint Case No. 597/2019 against the respondent for the offence under Section 138 of the Negotiable Instruments Act. Learned Magistrate has dismissed the complaint for want of prosecution vide order dated 30.01.2020.

5. Perused the Roznama along with impugned order. The proceedings was kept in Lok Adalat on 11.11.2019, on which both sides were present, but the matter was not settled. Thereafter, on 04.12.2019 and 04.01.2020, the case was fixed for taking steps probably for issuing summons or warrant to the accused. Then on 20.01.2020, learned Magistrate has disposed of the complaint since steps were not taken.

6. It reveals that within six months from the filing of private complaint, it was dismissed for want of prosecution. Only on two dates, the complainant did not took steps which resulted into dismissal

of complaint for want of steps. Learned Magistrate ought to have given sufficient opportunity to the complainant to take steps. Matter requires adjudication on merits by giving sufficient opportunity to the complainant. Obviously, after restoration, if again complainant fails to take steps then suitable orders could be passed. In that view of the matter, appeal deserves to be allowed, hence following order:-

(I) Appeal stands allowed and disposed of.

(II) Impugned order dated 20.01.2020 passed in Summary Complaint Case No. 597/2019 by the Judicial Magistrate First Class, Nandura is hereby quashed and set aside.

(III) The Summary Complaint Case No. 597/2019 is restored at the same stage.

(IV) The complainant is directed to appear before the learned Magistrate on 30.09.2021 and to take steps at the very date.

JUDGE