

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.527 OF 2020
IN
CRIMINAL APPEAL NO. 489 OF 2020

APPELLANT:
ORI. COMPLAINANT

The Chinavispura Sahakari Bank Ltd.,
Nagpur, bearing Regd. No. 294,
Having it's Head office at
Budhwar Bazar, Mahal, Nagpur.
Through its Authorised Officer
Shri Kishore Namdeorao Mutkure,
as per P.O.A Dated 04.02.2016
Nagpur.

... Versus ...

RESPONDENT:
ORI. ACCUSED

Shri Prashant S/o Vasantrao Pahune
Aged about: Major, Occ: Business
R/o Plot No.88, House No. 233,
Ward No.2, Pipal, Dist. Nagpur.

Shri R.M. Patwardhan, Advocate for the Appellant.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 3rd FEBRUARY, 2021

ORAL JUDGMENT:-

Heard.

02] Leave granted.

03] The Appellant, who shall be hereinafter referred to as the

Complainant, has assailed the order dated 20/10/2018 passed by the Judicial Magistrate First Class, Nagpur determining the complaint under Section 138 of the Negotiable Instruments Act, 1881 for want of prosecution under Section 256 of the Code of Criminal Procedure.

04] The Complainant is a Bank and had filed a complaint under Section 138 of the Negotiable Instruments Act for dishonour of the cheque issued by the respondent towards repayment of loan amount. By order dated 11/10/2017, learned Magistrate issued process and the case was fixed for appearance on 28/11/2017. The records reveal that the Complainant had prayed for service of summons by registered post. The roznama dated 12/04/2018 indicates that summons, which were issued by R.P.A.D., was returned unserved. In between, the matter was referred to Lok Adalat, and was once again taken up on board, since the matter could not be settled. The matter was adjourned on 9/10/2018 since the learned Magistrate was deputed for training, despite which the matter was listed for dismissal. On the next date, the complaint was dismissed in view of the absence of the Complainant.

05] It is stated that the Counsel representing the Complainant was unable to attend the Court due to his ill-health and that the complaint was dismissed before the representative of the Complainant could reach the Court and seek adjournment. The records indicate that the Complainant was

diligent. The observation that there has been non-compliance of various orders, is not borne from records. The matter had not reached evidence stage and the Complainant had not adopted dilatory tactics. Hence, reliance on the decision of *Shiv Cotex Vs. Tirgun Auto Plast Pvt. Ltd. & Others* reported in **2012 (2) Mh.L.J. 439**, appears to be misplaced. It is to be noted that though Section gives discretion to the Court to dismiss the complaint, such discretion should not be exercised in a casual manner. Dismissing the complainant for one singular default in appearance on the part of the Complainant would result in failure of justice, particularly keeping in mind the effect of dismissal in default.

06] Under the circumstances, the impugned order cannot be sustained. The appeal is allowed. The impugned order is set aside. The matter is remitted with directions to the learned Magistrate to proceed with the matter in accordance with law.

07] The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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