

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

CRIMINAL APPEAL NO. 821 OF 2022

Santosh Ramnarayan Bhattad,
Age : 45 Years, Occ. Lawyer,
R/o Rachana Coloney, Behind
Deshonnati Press, Gorakshan Road,
Akola, P.S.Khadan Police Station,
Akola, Dist. Akola

.... Appellant

// VERSUS //

Seikh Ashpak Seikh Bagu,
Age : 46 years, Occ. Agri & Business,
R/o Saundala, Post Saundala,
Tq. Telhara, Dist. Akola,
P.S.Hiwarkhed

... Respondent

Shri A.P.Bhuibhar, Advocate h/f Shri D.S.Patil, Advocate for the
appellant.

Shri V.B.Bhise, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 23rd NOVEMBER, 2022

ORAL JUDGMENT :

Heard.

Admit.

In this appeal, the challenge is raised to the order below Exh.1 dated 8th March, 2022 passed by learned Judicial Magistrate First Class (Court No.2), Akola in Summary Criminal Case No. 2295 of 2019, dismissing the complaint on the ground that the complainant has failed to take proper and meaningful steps in order to proceed with the matter.

2. Learned counsel for the appellant has pointed out that though immediately after receipt of the summons, it was sent by R.P.A.D on 10th November, 2021. However, failure of the appellant to submit the receipt is the reason for dismissal of the complaint. It is pointed out that the appellant or his counsel could not attend the matter on subsequent dates and therefore it was not pointed out to the learned trial Court that steps have already been taken. Accordingly, he submits that the appellant should get one more opportunity to pursue his complaint.

3. Learned counsel for the respondent supports the order of the learned Magistrate and prays for dismissal of the present application.

4. I have gone through the record and the impugned order passed by the learned trial Court.

5. The learned trial Court dismissed the complaint vide Order below Exh.1 dated 8th March, 2022, passed in the Summary Criminal Case No. 2295 of 2019, which was taken out for special drive in pursuance of letter of this Court dated 31st January, 2022, because of the failure of the appellant/complainant to take proper and meaningful steps in order to proceed with the matter. It is further observed by the trial Court that appellant/complainant received by hand summons to issue it through R.P.A.D on 22nd October, 2021. However, the appellant/complainant had not produced any receipt.

6. The postal receipt along with present application shows that on 10th November, 2021, the summons received by the applicant, were

issued through R.P.A.D. Record further shows that after the summons were issued through R.P.A.D on three subsequent dates neither the counsel nor appellant attended the case.

7. Now the counsel for the appellant has given an undertaking to attend the case before the trial Court on every date either through Advocate or in person without fail.

8/ In the circumstances, considering the fact that summons were issued through R.P.A.D which fact the respondent is not disputing and on considering undertaking of the appellant, I am of the opinion that the appellant is entitled for an opportunity to pursue his complaint. Accordingly, I pass the following order.

- i. The criminal appeal is allowed;
- ii. Order below Exh.1 dated 8th March, 2022 passed by learned Judicial Magistrate First Class (Court No.2), Akola in Summary Criminal Case No. 2295 of 2019, is hereby quashed and set aside. Thereby complaint is restored back to its original number;
- iii. Applicant shall appear before the trial Court on **19th December, 2022** and take necessary steps as required by law;

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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by
SACHINDANAND
K NAIR
Date: 2022.11.28
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