

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

CRIMINAL WRIT PETITION No. 361/2022.

Mukesh s/o Jamnadas Udeshi,
Aged 55 years, Occupation
Business, resident of 247,
Shrivallabh Complex, Dharaskar
Road, Itwari, Nagpur.

... **PETITIONER.**

VERSUS

Haldiram Foods International Pvt.Ltd.
(Formerly), Komal Foods Pvt. Ltd.,
Having its corporate office at 145/146,
Old Pardi Naka, Bhandara Road,
Nagpur, 34
through its Director
Shri Srinivasrao s/o Sambhashivrao Vinnokata,
aged Major, Occupation Director,
resident of Wathoda, Nagpur.

... **RESPONDENT.**

Ms. Surabhi Naidu, Advocate for the Petitioner.
Shri S.Dewani, Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : JUNE 10, 2022.

ORAL JUDGMENT :

Heard learned Counsel for the parties. With their consent matter is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner is the original accused in Summary Criminal Case No.8037/2020 pending on the file of Judicial Magistrate First Class, Nagpur for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner has raised multiple challenges in this petition namely – to quash [i]order of issuance of process dated 17.12.2020, [ii] order dated 02.05.2022, by which action under Section 421 of the Code of Criminal Procedure was initiated for non-compliance of the order dated 06.01.2022 passed by the Magistrate in terms of Section 143-A of the Negotiable Instruments Act and [iii] finally the order dated 02.06.2022 by which the Criminal Revision No.128/2022 filed by the petitioner came to be dismissed in default.

3. Initially the respondent has filed a complaint for the offence punishable under Section 138 of the Negotiable Instruments

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Act. On prima facie satisfaction, the learned Magistrate took cognizance and has issued process in terms of Section 204 of the Code vide order dated 17.12.2020. Admittedly the order of issuance of process was not challenged before the higher forum. Thereafter, on an application filed by the respondent / complainant, the learned Magistrate vide order dated 06.01.2022, directed the petitioner to pay 20% of the disputed cheque amount towards compensation within a stipulated period in terms of Section 143-A of the Negotiable Instruments Act.

4. Since the said order was not complied, the complainant has applied to the Magistrate under Section 421 of the Code of Criminal Procedure for taking appropriate action. The learned Magistrate vide order dated 02.05.2022 has issued warrant under Section 421 of the Code for compliance of the order of compensation. Being aggrieved, the petitioner has filed Criminal Revision No.128/2022, essentially challenging the order of issuance of recovery warrant.

5. It reveals from the impugned order dated 02.06.2022

Rgd.

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that the revision application was virtually dismissed for want of prosecution. Record indicates that summons of the revision was not served on respondent/complainant. The petitioner was called upon to serve the respondent. The learned Judge has recorded that the learned Advocate for the revision petitioner made a misstatement before the Court and refused to take steps. The conduct of the learned Advocate has been recorded in the impugned order by the learned Judge. The order further indicates that the learned Advocate for the revision petitioner instead of complying with the directions, himself requested the Court to dismiss the revision petition. The learned Judge recording said submission, dismissed the revision petition, since summons was not served on other side and revision petitioner refused to take steps.

6. The learned Counsel for the petitioner submits that whatever is recorded by the learned Judge is incorrect. She would submit that the learned Advocate who appeared before the learned Judge, has made a complaint of the concerned Judge by denying the happenings as noted in the impugned order.

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7. Apart from the allegations and counter allegations, it is apparent from the record that in revision petition steps were not taken. The revision petitioner not only refused to take steps, but, asked for dismissal, and therefore, the revision petition was dismissed. Thus, there is no dispute that the matter was not decided on merits. Therefore, in order to sub-serve the ends of justice, the petitioner can be permitted to agitate his grievance in the revision petition on merits. However, record indicates that the petitioner has refused to take steps, as well as asked the learned Judge to dismiss his own revision, which speaks volume.

8. In view of above, it is desirable to restore the revision petition on certain terms, since revision petition was not decided on merits, it is not necessary to consider other challenges. Hence, the following order.

ORDER

[i] Criminal Writ Petition is allowed.

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- [ii] The impugned order dated 02.06.2022 passed in Criminal Revision Application No.128/2022 by the Additional Sessions Judge, Nagpur is hereby quashed and set aside. Criminal Revision is restored on the same stage.
- [iii] Both parties are directed to appear before the learned Sessions Court on 24.06.2022.
- [iv] The restoration is subject to payment of costs of Rs.10000/- by the petitioner to the respondent on or before 23.06.2022. Deposit of the cost amount in the Sessions Court will amount to sufficient compliance. In case the amount of costs is not paid or deposited, the revision application shall be treated as dismissed.
- [v] Rule is made absolute in aforesaid terms.

JUDGE