

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

CRIMINAL APPEAL NO. 456 OF 2019

Shri Siddharth S/o. Pandurang Bodele,
Aged about 46 years, Occ.: Retired,
R/o. Khalasi Line, Near Buddha Vihar,
Mohan Nagar, Nagpur.

.... **APPELLANTS.**

// VERSUS //

Shri Ajay S/o. Sulchand Lanjewar,
Aged about 43 years, Occ. : Business,
R/o. Khalasi Line, Near Buddha Vihar,
Mohan Nagar, Nagpur.

.... **RESPONDENTS.**

Shri D.R.Galande, Advocate for Appellant.
None for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 30, 2022.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant. None for the respondent, though served.

2. **ADMIT.**

3. In this appeal filed under Section 378(4) of the Code of Criminal Procedure challenge is raised to the order below Exh.1 passed by 20th Joint Civil Judge Junior Division and Judicial Magistrate First Class (Special Court for 138 N.I. Act, Nagpur) (hereinafter referred to as “Special Court”) acquitting the accused.

4. The brief facts of the present case are that the appellant filed Criminal Complaint under Section 142 read with Section 145 of the Negotiable Instruments Act, 1881 for the offence punishable under Section 138 of the Act, alleging that on a need expressed by the accused of urgent requirement of the amount of Rs.2,00,000/- for construction of the house, a hand loan was given to the accused, which he failed to repay and on repeated requests he issued a cheque amounting to Rs.2,00,000/-, dated 08/09/2016 which was dishonoured and therefore, the complaint was filed.

5. The learned trial Court acquitted the accused vide impugned order dated 15/12/2018 on the ground that the complainant i.e. appellant was continuously absent in spite of the repeated opportunities were given to the appellant, no evidence was adduced by

him. Furthermore, on 05/06/2018 though the trial Court specifically directed that in case of failure of the complainant to adduce the evidence, necessary orders would be passed. Even thereafter the complainant did not turn up to adduce the evidence and therefore, observing the conduct of the appellant, the Summary Criminal Case filed by the appellant was dismissed.

6. The learned counsel for the appellant submits that the appellant should get one opportunity as the amount is of Rs.2,00,000/-, which has not been paid by the accused. He submits that for the mistake of the advocate the litigant should not be suffered and accordingly, he prays for quashing and setting aside the impugned orders dated 15/12/2018.

7. I have perused the record. The order-sheet of the trial Court shows that on 08/11/2016 the complaint was filed. Thereafter the appellant was continuously absent on 01/02/2017, 07/07/2017, 08/08/2017, 28/09/2017, 22/06/2018, 10/07/2018, 21/08/2018, 23/10/2018 and lastly on 15/12/2018 on which date the impugned order was passed.

8. The above referred dates clearly depict that sufficient opportunities were given to the appellant by the learned trial Court to adduce evidence and to pursue his cause.

9. However, the appellant failed to attend the proceedings for such a long period, which ultimately resulted in acquitting the accused.

10. In absence of any material brought on record by the appellant to show that any efforts were made by the appellant to contact his counsel to know the status of the case, blaming the Advocate and making submission that for the mistake of the Advocate the litigation should not be suffered, cannot be accepted.

11. In the circumstances referred above and in absence of any perversity in acquitting the accused vide impugned order dated 15/12/2018, the appeal needs to be dismissed. Hence, I pass the following order.

The Criminal Appeal is **dismissed**.

JUDGE