

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

...

**CRIMINAL APPEAL NO. 375/2022**

Shri Dipak s/o Narayan Lolure  
Aged about 42 years, occu: Service  
R/o Near Hanuman Temple,  
Shukrawar Peth, Washim.

..Appellant

**versus**

Shri Ramesh s/o Goyarsha Tope  
Aged 44 years, occu: service  
R/o Valmiki Nagar,  
Near Railway Station, Washim.

..Respondent

...

Mr.A.P. Deshmukh, Advocate for the appellant  
Respondent is absent though served.

....

**CORAM:** ANIL L. PANSARE, J.

**DATED** : 6<sup>th</sup> January, 2023.

**JUDGMENT:**

**Admit.** Heard finally.

2. The impugned order dated 16.11.2019 passed below  
Exh.1 in SCC No.386/2017 by the learned Chief Judicial  
Magistrate, Washim, reads as under :

*“ Today matter is taken on special drive board.  
The offence alleged in the matter is punishable under  
section 138 of the Negotiable Instrument Act. The  
complainant and his learned Advocate are absent on  
repeated calls. Matter is pending for evidence of  
complainant since last so many dates. On 17.08.2019*

*order is passed to that effect. But complainant has not taken any steps in the matter. Today also complainant and his advocate are absent. No application is filed on record. The matter is held up on the same stage without having any progress. It appears that the complainant lost interest in the matter. Hence, the matter stands dismissed in default due to non-appearance of complainant under section 256 of the Code of Criminal procedure. Accused is acquitted. Proceedings be sent to record room and disposed of accordingly.”*

3. The order indicates that the complainant has not taken steps to tender the evidence. However, Mr. A.P. Deshmukh, learned counsel for the appellant has drawn my attention to the record and proceedings, to contend that the affidavit in lieu of examination-in-chief along with documents was filed on 09.10.2018. Even the *Roznama* (proceeding sheet) dated 09.10.2018 indicates that the appellant has filed affidavit so also the documents. Despite such status, the complaint came to be dismissed for only one lapse viz. absence of the appellant (original complainant) and his Advocate on 16.11.2019.

4. It appears that in the zeal of disposing of cases in the special drive, the learned Chief Judicial Magistrate, Washim inadvertently failed to recognize the correct status of the

proceedings and arrived at a conclusion which is contrary to the record.

5. The respondent though served is absent and, therefore, there is no counter to what has been stated by the learned counsel for the appellant.

6. The learned counsel for the appellant submits that the appellant will be diligent in proceeding with the complaint and will not seek any adjournment. On the basis of assurance given and for the reasons recorded herein-above, the appellant has made out a case. Hence the following order:-

**ORDER:**

- (i) Criminal Appeal No. 375/2022 is allowed.
- (ii) The order dated 16.11.2019 passed by the learned Chief Judicial Magistrate, Washim in SCC No.386/2017 is set aside.
- (iii) The complaint is restored back to file of learned Chief Judicial Magistrate, Washim, who is directed to hear the matter afresh after affording an opportunity of hearing to both sides and pass a fresh order in accordance with law.
- (iv) The appellant to appear before the court on 18.02.2023.
- (v) R & P be sent back immediately.

Criminal Appeal stands disposed of in the aforesaid  
terms.

[ANIL L. PANSARE,J.]

*sahare*