



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 296 OF 2024

Vijay Eknathrao Gaikwad,
Age 50 years, Occu. Service,
R/o. N-3, Plot No.204, CIDCO,
Chhatrapati Sambhajinagar

.. Petitioner

Versus

1. Sachin K. Lad,
Authorized Signatory of
M/s. Niraj Earth Movers,
Civil Contractor & Developers,
R/o. Sai House, Plot No.326,
Chincholi Kaldatt, Taluka Karjat,
District Ahmednagar

2. M/s. Niraj Earth Movers,
Civil Contractor & Developers,
R/o. As above

.. Respondents

Mr. Ishwar Kalyan Wagh, Advocate for the Petitioner

CORAM : S. G. MEHARE, J.

DATE : 26-06-2024

PER COURT :-

1. Heard the learned counsel for the petitioner. Notices were served upon respondents, but they did not appear; hence, matter to proceed *ex-parte*.

2. The petitioner has challenged the order of learned Judicial Magistrate First Class, Aurangabad, below Exhibit-1 in S.C.C.No.654 of 2016 dated 06.12.2023, dismissing the complaint.

3. Learned counsel for the petitioner submits that respondents/accused were absent. Hence, the application for issuing non-bailable warrant against them was filed on 27.02.2021. The Court allowed the application. Since then, the matter was posted for awaiting warrant till 23.11.2022. Since the matter was unready and warrant was not executed, the petitioner was under the impression that the matter would be adjourned for return of warrant. His presence for the return of warrant was not essential. Since there was no progress in the matter, he did not attend the trial.

4. Referring to the *Roznama*, he submits that the Court has suddenly changed the stage of return of N.B.W. Learned Judicial Magistrate, without considering the facts of the case, particularly stage of the case, has erroneously dismissed the case under special drive. He submits that learned Judicial Magistrate hastily exercised the powers under Section 256 of the Code of Criminal Procedure (for short, "Cr.P.C.") and dismissed the matter for default under special drive.

5. Stale matter are disposed of under special drive as per the directions of this Court. The stage of the matter the need of presence of the complainant ought to have been considered while exercising the powers under Section 256 of the Cr.P.C. Such powers could not be exercised mechanically only for the reason

that the matter is old and the party concerned is absent. While exercising such power, the Court has to examine and ascertain need of the presence of the complainant. There is nothing on record, how stage of non-bailable warrant has been changed for appearance. The petitioner, who was the complainant, has taken steps to issue warrant against the respondents, but non-bailable warrant was never executed against them.

6. Considering the facts in-toto, the Court is of the view that there were no reasons to exercise the power under Section 256 of the Cr.P.C. under special drive. The petitioner was pursuing the complaint case under Section 138 of the Negotiable Instruments Act since 2016. His substantial right to recover the debt has been involved in the matter. The accused were dodging appearance in the Court. For the mistake of the accused, the petitioner should not suffer. The Court is not satisfied with the reasons for exercising powers under Section 256 of the Cr.P.C. under special drive. The conduct of the respondents/accused may be noted, even after summons was served but they were absent. The sole inference which can be drawn from their conduct is, they intend to dodge the trial. The substantial right of the petitioner to recover the debt has been involved in the matter. Dismissing such matters under Section 256 of the Cr.P.C. is unjustifiable.

7. For the above reasons, the writ petition deserves to be allowed. Hence, the order :-

ORDER

- i) Criminal writ petition is allowed.
- ii) The order passed by the learned Judicial Magistrate First Class, Court No.19, Aurangabad, in S.C.C.No.654 of 2016 dated 06.12.2023, stands quashed and set aside.
- iii) S.C.C.No.654 of 2016 is restored to the file of the learned Judicial Magistrate First Class, Court No.19, Aurangabad.
- iv) The petitioner/complainant shall appear before the Court on 22.07.2024 and take steps to secure the presence of the accused.

**(S. G. MEHARE)
JUDGE**

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