



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 1063 OF 2023**

Jalgaon Janata Sahakari Bank Ltd.,  
Jalgaon, Head Office “Seva”, 117/119,  
Navi Peth, Jalgaon, Branch Station Road,  
Jalgaon.

Through its Authorized Person/Signatory namely;  
Dnyaneshwar s/o. Pundalik Andhale,  
Age – 50 years, Occu. Service,  
R/o. Jalgaon Janata Sahakari Bank Ltd.,  
Branch Station Road, Jalgaon,  
Taluka and District Jalgaon.

... Appellant  
[Orig. Complainant]

Versus

Satish s/o Kashinath Wani,  
Age: 54 years, Occu. Business,  
R/o. 139, Navi Peth, Prakash Opticals,  
Near Dena Bank, Jalgaon,  
Taluka and District Jalgaon.

... Respondent

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Mr. Ankush N. Nagargoje, Advocate for the Appellant.

Mr. D. A. Bide, Advocate for the Respondent.

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 25.01.2024

Pronounced on : 31.01.2024

**JUDGMENT :**

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act, is assailing the order of learned 2<sup>nd</sup> Jt. C.J.J.D. and J.M.F.C., Jalgaon passed below Exhibit 1 in SCC No. 973 of 2018 dated 16.09.2022, dismissing the above

proceedings thereby acquitting present respondent from offence under Section 138 of the Negotiable Instruments Act [NI Act].

2. Heard Mr. Nagargoje for the appellant as well as Mr. Bide for the respondent.

3. Learned counsel for the appellant submitted that there is non-appreciation of evidence and law by learned trial Judge. That, all necessary ingredients to attract the offence were available in the evidence adduced by the appellant. Transaction of loan was established, however, only for want of prosecution, matter has been dismissed for default. According to him, there was no fair opportunity in this context and only because of above order, accused has been acquitted and hence the appeal.

4. In answer to above, learned counsel for the respondent would point out that there was deliberate attempt to prolong the matter. That, in fact, accused is a guarantor and not borrower. That, in spite of several dates, complainant failed to prosecute. According to him, trial court has rightly discussed the above non-diligence of complainant and so he prays to dismiss this appeal also.

5. On hearing the submissions of both sides, it seems that present appellant instituted proceedings under Section 138 of the NI Act setting up a case that one Ramchandra Vilas Nimbalkar obtained loan to the tune of Rs.3,00,000/-. He did not repay the loan as agreed and when all efforts failed, the bank proceeded against the guarantor. That, respondent had issued cheque to the tune of Rs.50,000/- but on its presentation, it was returned dishonoured and therefore legal notice was dispatched and on further failure to repay the amount within stipulated period, proceedings under the NI Act were initiated.

6. Complainant under NI Act seems to be lodged on 03.02.2018. Therefore, apparently complaint is filed in 2018. Record shows that complaint was dismissed by order dated 16.09.2022 i.e. after four years. The impugned order is as under:

“Perused record. This is an old case pending since long. Today complainant is absent. Accused is present. Plea of the accused is recorded in the year 2018. No effective steps are taken by the complainant towards hearing of the case. It appears that complainant is not interested to prosecute the case. Hence following order is passed.

#### **ORDER**

- 1] Complaint is dismissed vide Sec.256 Cr.P.C.
- 2] Accused is acquitted.”

7. While hearing learned counsel for the appellant, it is tried to be submitted that non-prosecution was due to Covid pandemic during which courts were not functioning and therefore complainant could not attend the matter and prosecute it. However, learned counsel for the respondent objected by submitting that on every date matter appeared on board but complainant failed to appear, lead evidence and contest the matter.

8. It is clearly emerging that complaint is of 2018, no doubt Covid Pandemic had affected and disrupted the court functioning but the onset of Covid was in March 2020 and the lock-down and restrictions which were clamped, were prevailing by June 2021 and thereafter courts resumed functioning, both by physical mode as well as virtual mode i.e. by hybrid mode. However, complaint seems to have been dismissed on 16.09.2022 i.e. more than a year after resumption of the courts. It is mandate of statute that the proceedings under Section 138 of the Negotiable Instruments Act are to be dealt and decided expeditiously. Learned trial court has committed no error in passing the impugned order. No case being made out, I proceed to pass the following order :

**ORDER**

The appeal is hereby dismissed.

**[ABHAY S. WAGHWASE, J.]**

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