



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

CRIMINAL APPEAL NO.174/2024

Shree Pesticides and Chemicals, thr. Its Partner Vinit Arun Shirao
Vs.

Jaikisan Krushi Seva Kendra, thr. It's Proprietor Chandrakant Laxmanrao Jadhao and
another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.B. Gandhe, Advocate for appellant

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/07/2024

By preferring this appeal, the appellant has challenged the order passed by the learned Judicial Magistrate First Class Court No.3, Amravati, in S.C.C. No.2997/2015 by which the complaint of the complainant is dismissed under Section 256 of the Criminal Procedure Code and accused is acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Being aggrieved and dis-satisfied with the same, present appeal is preferred by the appellant on the ground that on a technical ground, the complaint is dismissed by the learned trial Court. The provision of Section 256 is invoked incorrectly. The learned trial Court cannot dismiss the complaint without considering the merit of the same. In support of the contention, learned Counsel placed reliance in **Akbar Talab Vs. A.G. Pushpakaran and Ors.** reported in **2018 ALL MR (Cri.) 1208.**

3. Despite the service, none appears for the respondents.

4. The applicant is the original complainant who is the manufacturer and seller of the various types of chemicals and deals in the said business under the name and style of 'Shree Pesticides and Chemicals' at Amravati. The accused Nos.1 and 2 are the Proprietors of the another firm and having business relations with the complainant. Out of business relations, they have issued a cheque in favour of the present complainant bearing No.011151 of Rs.2,50,740/- drawn on the ICICI Bank, Malegaon Branch and same was signed by the accused No.2 who is Proprietor of the said firm. On depositing the same, the cheque was disordered on the ground of insufficient fund.

5. After due compliance, the notice was issued to the respondents. After receipt of the notice also, the respondents failed to pay the payment and, therefore, the complaint was filed under Section 138 of the Negotiable Instruments Act. The summons was served on the respondents and they appeared before the learned trial Court. As the complainant was absent and not adduced the evidence, the complaint was dismissed and the accused was acquitted.

6. Learned Counsel for appellant Shri Gandhe, submitted that the Counsel was present, however has not taken steps and, therefore, the complaint was dismissed. He submitted that the learned trial Court

ought to have decided the complaint on its own merit and not on the technical ground. He invited my attention towards paragraph No.15 of the aforesaid referred judgment and submitted that wherein also this Court has considered that the disposal of the complaint herein filed by the applicant under Section 138 of the Negotiable Instruments Act resulting into acquittal of the respondent was due to absence of the complainant and his advocate on that date, and as such the said dismissal of the complaint was on technical grounds and not on merits. Vital rights of the complainant are involved in the said complaint since apparently there was a transaction between the complainant and the accused in respect of cheque of Rs.1,00,000/-. He submitted that similar are the facts in the present case and, therefore, it is squarely applicable in the present case also. In view of that, the leave is to be granted to the present applicant to pursue this appeal.

7. It is well settled by a catena of decisions that doctrine of audi alteram partem contemplates that no one should be condemned unheard. It is also held in number of the decisions that a party should not be allowed to suffer because of a negligence of his Counsel. At the same time, it is also settled that the law can help the diligent and not the negligent.

8. Learned Counsel for appellant submitted that due to the absence of the complainant i.e. on the technical ground, the complaint is dismissed. On the

perusal of the Rojnama, it reveals that since the initiation of the complaint, continuously the complainant is absent. Admittedly, at the initial stage, the presence of the complainant was not required, but when case was fixed for recording the evidence and after sufficient opportunity, the complainant failed to adduce the evidence. The learned trial Court has dismissed the complaint.

9. Learned Counsel for appellant invited my attention towards Rojnama dated 20/07/2021, which shows that the complainant absent and Counsel present and case was adjourned for steps. Thereafter, at least on four occasions, the matter was kept for taking steps and for dismissal of order but the complainant has not taken cognizance of the same and those steps are taken. Thus, after sufficient opportunity, the learned trial Court has dismissed the complaint by invoking the power under Section 256 of the Criminal Procedure Code. Thus due to the continuous absence of complainant, the complaint was dismissed by invoking the powers under Section 256 of the Criminal Procedure Code.

10. Considering the Rojnama, wherein consistently the absence of the present complainant was recorded and though the Counsel was present on one or two occasions, he has also not taken steps. Therefore, the learned trial Court has rightly invoked the powers under Section 256 and rightly dismissed the complaint. There is no ground to entertain the

application for leave to file an appeal. In view of that, application deserves to be rejected. Hence rejected.

JUDGE

R.S. Sahare