



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

CRIMINAL APPEAL NO.381 OF 2022

Nuziveedu Seeds Ltd.,
through its authorized officer,
Manish s/o Madhukarrao Range
Age – 47 years, Occupation – Service,
R/o. Plot No.J-48, M.I.D.C.-III, Akola
Tq. & District Akola

...APPELLANT

VERSUS

Pravin Subhash Shirode,
Prop : Kapila Krushi Seva Kendra,
R/o. Opp. Bus stand,
Bramhangaon,
Tal. Satana, District Nashik

...RESPONDENT

Ms M. Agrawal, Advocate h/f Mr. N.R. Tekade, Advocate for the
appellant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : SEPTEMBER 12, 2024.

ORAL JUDGMENT :

Heard. **ADMIT.**

2. The appeal is preferred by the original complainant against the order passed by the Judicial Magistrate First Class, Court No.2, Akola in S.C.C. No.1742 of 2014 dated 26/02/2020 by which the complaint of

the complainant was dismissed under Section 256 of the Code of Criminal Procedure as the complainant was absent.

3. The appellant is the original complainant who filed the complaint against the respondent alleging that he is serving as an Administrative Officer in Nuziveedu Seeds Ltd. who deals with the seeds of the various crops. The accused is one of the dealer of the said company who has purchased the stock on credit and against the credit, he has issued the cheques bearing Nos.102805 and 102806 drawn on Dena Bank. The said cheques were deposited by the company on 19/04/2014 but as there was no sufficient fund it returned with an endorsement 'Funds Insufficient' on 21/04/2014. Thereafter the complainant has issued the notice on 01/05/2014. Said notice was received by the accused but after receipt of the notice also he has not paid the amount, and therefore, the complainant constrained to file the complaint against the accused.

4. After filing of the complaint, the learned trial Court has taken cognizance of the said complaint and after verification issued the process against the accused. The accused appeared before the trial Court. Subsequently, the plea was recorded and the case was fixed for adducing the evidence. During the pendency of the complaint, the accused remained absent, and therefore, the evidence could not be

recorded. The non-bailable warrant was issued against the accused but it was not executed as the report was not received by the Court. On 26/02/2020, the case was fixed for report of the non-bailable warrant but the learned trial Court has dismissed the complaint by observing that since long the complainant has not taken any steps and complainant remained absent. No application for adjournment and dismissed the complaint under Section 256 of the Cr.P.C.

5. Heard learned Counsel for the appellant. She submitted that the presence of the complainant was not at all required on the date of the dismissal. On the contrary, on various occasions the accused remained absent and the report of the bailable warrant was awaited but learned trial Court has not considered the same and dismissed the complaint by averting the provisions under Section 256 of the Cr.P.C. She submitted that on technical grounds, the complaint of the complainant was dismissed and no opportunity was granted to the complainant to litigate the dispute on its own merits. In support of her contention, she placed reliance on the judgments of this Court in the case of ***Pratap Vs. Bhagwandas*** in ***Criminal Appeal No.256/2011*** decided on 02/05/2011 and ***Rajendra Chandrarao Patil Vs. Manish*** in ***Criminal Appeal No.191/2018*** decided on 28/02/2018. She submitted that in above these two judgments, it is held that absence of the appellant and his Advocate and on that count the criminal complaint is dismissed. In fact,

the presence of the complainant was not at all required on the relevant date as matter was fixed for report of the service of the warrant. In view of that, the appeal deserves to be allowed.

6. Though notice is served on the respondent, none appears.

7. Perused the entire record as well as Roznama. From the Roznama it reveals that initially the accused appeared, and therefore, the case was fixed for recording the evidence. Again the accused remained absent, and therefore, time and again non-bailable as well as bailable warrant was issued against the accused to secure his presence. On the day of the dismissal also it was fixed for receiving the report of the bailable warrant. Thus, the presence of the accused was not at all required on the day when the case was fixed before the Court. This Court in the case of *Pratap Vs. Bhagwandas* (supra) wherein by referring the judgment of *Manjit Kaur Vs. State of Punjab and anr. [2006 (6) ALL MR (Journal) 27]* it is observed that the proviso to sub-section (1) of Section 256 of the Code of Criminal Procedure clearly provides that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate thinks that the personal attendance of the complainant is not necessary, the same may be dispensed with. The Court need not adopt a shortcut method to put an end to the litigation. The learned Magistrate, before dismissing the

complaint in default should have recorded the reasons as to why he does not deem it proper to adjourn the hearing. However, no such reasons were forthcoming and, therefore, the impugned order cannot be sustained.

8. Similarly, in *Narender Parashar Vs. Jagbir Singh 2009 ALL MR (Cri.) Journal 329* wherein also it is held that in view of the proviso to Section 256 it is the Magistrate who has to think that the personal attendance of the complainant is whether necessary or not and shall pass the reasoned order.

9. In the light of the above observations and the proviso which says that where the complainant is represented by a Pleader or by the Officer conducting the prosecution or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

10. After going through the proviso it reveals that undisputedly the case was fixed for receiving the report of the execution of the bailable warrant which was issued against the accused. The Roznama continuously shows the absence of the accused whereas complainant and his Counsel remained absent in exceptional date. The proviso to Sub-

Section (1) of Section 256 of the Cr.P.C. wherein it is specifically mentioned that where the Magistrate thinks that the personal attendance of the complainant is not necessary, the same may be dispensed with. As observed in the case of Manjit Kaur Vs. State of Punjab and anr. (supra) the Court need not adopt the shortcut method to put an end the litigation but the parties to be permitted to litigate their cause on its own merits which is not considered by the trial Court. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The matter is remanded back to the trial Court i.e. 2nd Judicial Magistrate First Class, Akola at its original stage.
- (iii) The trial Court shall give sufficient opportunity to the complainant as well as the accused to adduce the evidence and dispose of the case on its own merits.
- (iv) The parties to appear before the trial Court on 30th September, 2024.

11. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)