



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

CRIMINAL APPEAL NO. 658 OF 2022

APPELLANT: Shri Sushil s/o Laxmandas Chandwani,
Aged 48 Major, Occupation; Chartered
Accountants, resident of Block No. 33,
Near Mahatma Gandhi School, Jaripatka,
Nagpur-440014, Tahsil and District
Nagpur (Maharashtra State)

...V E R S U S...

RESPONDENT Shri Nanak Harichand Lalwani,
Aged Major, Occupation; Business,
Resident of Shop No. 2, Sainath Shopping
Complex, Dr. Ambedkar Chowk, Kamal
Chowk, Nagpur-440017
(Police Station Panchpaoli)

AND/OR

D2, Anmol Apartment, Misal Layout,
Jaripatka, Nagpur-440014
Police Station- Jaripatka

AND/OR

C/o Lakhimal Gangwani, Back Side of
Rajvilas Talkies, Mahal, Nagpur-440032,
Police Station Kotwali.

Ms. Ayushi Dangre, counsel h/f Mr. Sandeep Naresh Singh,
counsel for appellant.

None for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 19/08/2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of learned counsel appearing for the party.
4. By preferring this appeal, the appellant has challenged the order of acquittal passed by the learned Additional Chief Judicial Magistrate, (Special Court for Section 138 of the Negotiable Instruments Act), Nagpur, in Summary Criminal Complaint No. 5735/2016, by which the complaint of the complainant was dismissed.
5. Learned counsel for the appellant submitted that, appellant is the original complainant who filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 contending that, complainant is the registered Chartered Accountant having its Firm since last 14 years. The accused had engaged complainant for preparing and submitting his Income Tax Returns, and there was cordial and friendly relationship between them, as the accused his customer since last 9 years. The accused was in need of financial assistance for starting his business,

therefore, he approached to the complainant. The complainant paid him an amount of Rs. 7,67,020/- and it was agreed that he would repay the same within short span of time. In stead of repayment, he has issued the cheque bearing no. 359824 dated 02/02/2016 amounting to Rs. 7,50,000/- drawn on Nagpur Nagrik Sahakari Bank Limited, Nagpur in favour of complainant towards legal and enforceable debt. The said cheque was deposited by the complainant in his account. However, it is returned with the endorsement "Funds Insufficient". Therefore, the complainant issued the notice. The said notice was received by the present accused but he has not repaid the amount and therefore, complainant constrained to file the complaint under Section 138 of the Negotiable Instruments Act,1881.

6. After filing the complaint, the Judicial Magistrate First Class has taken cognizance, and after recording the verification of the complainant, a process was issued against the accused. After issuance of the process, the summons was issued to the accused, and the complaint was pending before the Court for receiving the report of the summons. As no report was received regarding the service of the summons and no steps were taken by the complainant, on 21/07/2022, the Judicial Magistrate First Class

has dismissed the complaint for want of prosecution, and the accused is acquitted under Section 256 of the Code of Criminal Procedure.

7. Learned counsel for the appellant submitted that the presence of the complainant was not at all required, as the matter was fixed for awaiting the summons. Unless and until a summons report is received in court, there is no necessity to take the steps by the complainant. Hurriedly, the Judicial Magistrate First Class has passed the order, and on technical grounds, the complaint was dismissed under Section 256 of the Code of Criminal Procedure, and the accused is acquitted. She submitted that, on technical reasons, the complaint was dismissed. In fact, the complainant has every chance of success in the present complaint, and his presence was not at all required, as the case was fixed for receiving the report regarding the service of the summons to the accused.

8. After due notice to the respondent in the appeal, none appeared on behalf of the respondent.

9. Perused the complaint as well as the Rojnama filed by the learned counsel for the appellant, which shows that verification was recorded on 08/03/2017, thereafter, a summons was issued, and the case was pending for awaiting the summons. Since the

issuance of the process and on the date of dismissal also, it was pending for awaiting the summons. Admittedly, the case was not fixed for hearing or for taking the steps. The presence of the complainant was not required on the date when the complaint was dismissed.

10. Moreover, learned Judicial Magistrate First Class ought to have considered that it was for awaiting the summons, and the service report was not received in court, and therefore, no steps were taken. Thus, considering the complaint is dismissed on technical grounds and ignoring the fact that the presence of the complainant was not required, in view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order;

- a] The criminal appeal is **allowed**.
- b] The order passed by the learned 20th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur dismissing the complaint and admitting the accused, is hereby quashed and set aside.
- c] The complainant shall remained present before the Judicial Magistrate First Class, Nagpur on 02/09/2024 at 11.00 a.m. and shall take steps to

serve the summons to the accused.

- d] Learned Magistrate shall restore the complaint at its original stage.

The criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]