



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

CRIMINAL APPEAL NO. 184 OF 2024

APPELLANT: Vrushali Krushi Kendra, Hiwarkhed,
through its proprietor Digambar s/o
Motiram Tohare, Aged 68 years,
Occu: Business, R/o Hiwarkhed,
Tah. Telhara, District Akola.

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

RESPONDENT Gopal Alias Shrikant s/o Gyandev Sapkal,
Aged 37 years, Occu: Agriculturist,
R/o Danori, Tah. Akot, District Akola.

Mr. M. Agrawal, counsel holding for Mr. N.R. Tekade, counsel for
the appellant

Mr. V.B. Bhise, counsel for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 25/11/2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with consent of learned counsel

appearing for the parties.

4. The appeal preferred by the original complainant against the order passed by the Judicial Magistrate First Class, Telhara, in Summary Criminal Case No. 561/2017 below Exhibit No.1 dated 30/12/2019, by which the complaint of the complainant was dismissed for want of prosecution, as no steps were taken by the complainant to secure the presence of the accused.

5. The appellant is the original complainant, who filed the complaint against the respondent under Section 138 of the Negotiable Instruments Act, contending that he is running the Center by name Rushali Krushi Kendra and Electronic at Hiwarkhed and dealing with the sale of seeds, fertilizers, and other agricultural products. The accused is a regular customer of the complainant, and there was a friendly relationship between them. Since 2014, the complainant has purchased the seeds, fertilizers, and other agricultural equipment from time to time on credit. Towards the bill due from 2016 to 31/03/2017, the amount of Rs. 1,00,000/- was due from the accused therefore, the complainant demanded the said amount. On demand of said

amount, the accused has issued the cheque drawn on HDFC Bank Akola Branch of Rs. 1,00,000/- dated 20/06/2017. The said cheque was deposited by the complainant in his account in the Central Bank of India, Hiwarkhed Branch, on 20/06/2017, but the said cheque was returned with an endorsement "funds insufficient." The accused assured the complainant that if he deposited the cheque, it would definitely be honored, and therefore, the complainant has deposited the cheque. As the cheque issued by the accused was dishonored. The complainant issued a notice on 22/07/2017 by RPAD. The said notice was received by the accused on 31/07/2017. After receipt of notice also, the accused has not paid the amount, and therefore, the complainant is constrained to file a complaint under Section 138 of the Negotiable Instruments Act.

6. After filing the complaint, the learned trial Court has taken cognizance of the said complaint, and after verification, issued the process against the accused. The summons issued to the accused returned unserved, and therefore, the matter was kept for taking the steps. It is alleged by the complainant that on 23/09/2019, the complainant had already taken the steps and

placed reliance on the Online Roznama. It shows that, on 23/09/2019, it was not for taking steps, but the steps were already taken, notice was ready, and it was the office who has to issue the said notice, but the learned trial Court has not considered the same and held that no steps are taken and dismissed the complaint for want of prosecution.

7. Heard learned counsel for the appellant and submitted that, the presence of the complainant was not at all required on the date of dismissal. On the contrary, it reveals from the Roznama that already steps were taken by the complainant, and it was for the office to issue the notice, as the Roznama shows that notice was ready. However, the learned trial Court had not considered the same and erroneously dismiss the complaint without giving an opportunity to the complainant to litigate the dispute on its own merits.

8. Per contra, learned counsel for the respondent submitted that as no steps are taken by the complainant after sufficient opportunity, the trial court has rightly dismissed the complaint.

9. Perused the entire record as well as Roznama. From

the Roznama, it reveals that initially the notice was issued to the accused, but the said notice returned back unserved, and therefore the matter was kept for taking steps. Accordingly, on 23/09/2019, the complainant has taken place, and E-courts Services Roznama shows that the notice was ready, and it was for the office to issue to forward the notice for its service. Thus, the presence of the accused was not at all required on the day when the case was fixed before the court. The earlier date Roznama shows that it was for awaiting summons. Thus, the report was yet to be received. As 23/09/2019, no report was received therefore, the complainant has already taken steps, and it was mentioned that notice was ready. This Court in the case of *Pratap Vs. Bhagwandas in Criminal Appeal No.256/2011 decided on 02/05/2011*, by referring to the various judgments, it is observed that the Magistrate has to consider whether the personal attendance of the complainant is necessary or not, and for appropriate reason, the magistrate can adjourn the case, 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 no such reasons.

10. 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.

11. After going through the entire material on record, admittedly the learned Magistrate has not considered that it was not for taking the steps, but it was for the office to issue the notice. Thus, considering the entire record, the order passed by the Magistrate dated 30/08/2019 deserves to be set aside, and the criminal complaint deserves to be restored at its original stage. In view of that, I proceed to pass the following order.

- a] The appeal is **allowed**.
- b] The order passed by the learned Judicial Magistrate First Class, Telhara dated 30/12/2019, is hereby quashed and set aside, and the Criminal Complaint bearing Summary Criminal Case No. 561/2017 is restored at its original stage.

- c] The parties shall appear before the trial Court on 10/12/2024.

The appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]