



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

CRIMINAL APPLICATION (APPA) NO. 428 OF 2023

IN

CRIMINAL APPEAL STAMP NO. 10064 OF 2022

Moh. Siddik Sheikh Supdu through Mohd. Haris Mohd. Siddik

Vs

Sunil Dhanraj Chandak

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Saurav Ragurkar, counsel h/f Mr. Anand Parchure, counsel for applicant.

Mr. H.V. Dhage, counsel for respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 03/09/2024.

1. By preferring this application along with an appeal, the appellant is seeking leave to file an appeal against the acquittal passed by the Judicial Magistrate First Class, Malkapur.

2. Learned counsel for the appellant submitted that the appellant is the legal heirs of the original complainant who filed the complaint under Section 138 of the Negotiable Instruments Act, 1881. As the respondent has obtained the hand loan from the present appellant and not repaid the same. In discharge of legal and enforceable debt, he has issued the cheque bearing No. 220255 drawn on the Malkapur Urban Cooperative Bank Limited, Branch Malkapur. The original complainant has deposited the cheque, but the said cheque was dishonored and returned back with the endorsement "Funds Insufficient." Therefore, the applicant has issued the notice on 06/07/2018. After receipt of notice also, the

respondent has not repaid the amount, and therefore, the original complainant preferred the complaint.

3. Learned Magistrate has taken the cognizance of the complaint. During the pendency of the complaint, the original complainant was reported to be dead. Therefore, legal heirs filed an application to proceed with the complaint.

4. On 22/07/2022, the counsel of the complainant was present however, the accused were absent. The legal heirs of the complainant sought adjournment, and the matter was kept for adducing the evidence on 05/08/2022. Thus, only for one day, the complainant was not present, but the learned Magistrate has dismissed the complaint for want of prosecution.

5. He submitted that the huge amount of the complainant is involved in the said transaction, as the respondent has obtained the said amount as a hand loan and not repaid back. Learned Magistrate ought to have considered that only on one day, the applicant was not present, and merely on that ground, the complaint is dismissed. Therefore, he submitted that he has many arguable points in the present appeal, but the appeal would take its own time for its final decision.

6. He further submitted that the complaint is dismissed for want of prosecution as the complainant was absent. In fact, the magistrate ought to have offered an opportunity to the present applicant to litigate his litigation on the merits. That opportunity is not granted to the present

applicant, and therefore, leave is to be granted to prefer an appeal to the present applicant.

7. Learned counsel for the respondent strongly opposed the said application and submitted that there was continuous absence of the complainant and therefore, the complaint is dismissed.

8. After hearing learned counsel for the applicant and learned counsel for the respondent, perused the entire Roznama, from which it reveals that till 22/07/2022, the proceedings were attended either by the complainant or by his legal heirs or by his counsel.

9. Only on 05/08/2022, the counsel as well as the legal heirs of the original complainant were not present, and therefore, the case is dismissed. It is well settled that parties are to be permitted to litigate their cause on its own merits. Considering entire Roznama, it reveals that only on one day, the complainant or his legal heir were not present, and therefore, the complaint is dismissed. Considering the same, leave is to be granted. Accordingly, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] Leave is granted.
- c] The appeal be registered and listed for final disposal at the admission stage.

10. Stand over after **three weeks**.

[URMILA JOSHI-PHALKE, J.]