



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 156 OF 2024

Lokmat Media Pvt. Ltd.
(which is formerly known as Lokmat
News Papers Pvt.Ltd. & Prithvi Prakashan
Pvt. Ltd.) A company registered under
the Companies Act,
having its registered office at 126, Mittal Towers,
B-Wing, 12th Floor, Nariman Point, Mumbai,
and having its administrative Office at
Lokmat Bhavan, Jalna Road, Aurangabad
Through its Authorized Signatory,
SANJAY LALCHAND SAINDANE,
Age : 45 years, Occu : Service as General Managar
(Circulation) R/o: Aurangabad.

... Applicant
(orig. Complainant)

Versus

1. M/s. Manoj Agency,
Azad Chowk, Mandir Galli,
Near Brijwasi House, Near Shivling Math,
Latur.
2. M/s. Manoj Govindlal Sharma,
Age : Major, Occu : Business,
Prop. Of Manoj Newspaper Agency,
Azad Chowk, Mandir Galli,
Near Brijwasi House, Near Shivling Math,
Latur.
3. M/s. Kantilal and Brothers,
Azad Chowk, Mandir Galli,
Near Brijwasi House, Near Shivling Math,
Latur.
4. Kantilal Govindlal Sharma,
Age : Major, Occu : Business,
Prop. M/s. Kantilal and Brothers,
Azad Chowk, Mandir Galli,
Near Brijwasi House, Near Shivling Math,
Latur.

... Respondents

.....
Ms. Rani Bharuka Bora h/f Mr. S. S. Bora, Advocate for the Appellant.
Mr. Ajinkya Joshi h/f Mr. S. V. Natu, Advocate for Respondent Nos. 1
and 2.
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 25.06.2025

ORDER :

1. Heard.
2. Record shows that, initially leave to file appeal was sought by filing application no. 48 of 2019. This Court, vide order dated 01.02.2024, allowed the said leave application and directions were issued to register the appeal and the appeal was also admitted. This is how appeal has come up for consideration.
3. Learned counsel for the appellant would point out that, appellants is news paper publisher and respondents are distributors/dealers of which there is no controversy. That, respondents used to avail credits. Dues had accumulated and towards the same, cheque was issued but the same was dishonoured and therefore, proceedings under Section 138 of the Negotiable Instruments Act, 1981 were instituted. Learned counsel further

pointed out that, on verification learned Magistrate was duly satisfied and hence process was issued calling upon present respondents to answer the claim. However, because of non-appearance of complainant on given date, extreme step of dismissal of complaint by invoking Section 256 of Cr.P.C. has been adopted by learned JMFC. That, due to such harsh action, complainant has lost opportunity to seek legal action for commission of offence under Section 138 of the Negotiable Instruments Act. Therefore, leave to file appeal was required to be preferred and only after considering the merits in the same, this Court had granted leave.

4. Learned counsel for the appellant further pointed out that appellant is ready to diligently work out the matter henceforth before the trial court, and as a fair chance and to avoid injustice, she urges to allow the appeal.

5. While resisting the above application, learned counsel for the respondents would submit that there was failure to prosecute complaint. That, complainant was not diligent and thereby, had invited dismissal. Learned JMFC had rightly exercised powers under Section 256 of Cr.P.C. That, there was long and repeated absence of complainant inviting order of dismissal and consequential acquittal. It

is pointed out that, the right of respondents accused had got crystallized and it would be improper to take away such right and hence, appeal is sought to be dismissed for non diligence in prosecution.

6. In view of above submissions, and on going through the papers, as pointed out, this Court had granted leave to file appeal on finding a fit case for appeal. No doubt, learned JMFC is empowered to dismiss a complaint by invoking Section 256 of Cr.P.C., however, there is also mechanism to get the complaint restored by filing leave to appeal. Here, this Court has, by its order dated 01.02.2024, on due satisfaction and case being made out to that extent, has granted leave. There is no dispute that, complainant failed to prosecute the complaint under Section 138 of the Negotiable Instruments Act and has invited the above order. However, learned counsel for the appellant undertaks that, if further opportunity is granted to contest, the same would be utilized to its optimum and that too, diligently. There is no dispute that, process was also issued by learned JMFC, meaning thereby that learned Magistrate was also convinced about existence of *prima facie* case. Under such circumstances, for some reason if there is failure, which is unintentional, to prosecute the complaint, dismissing the complaint would be a bit harsh action.

Hence, in the interest of fair opportunity and to avoid injustice, appeal is required to be remanded back to the trial court to be dealt on merits afresh by allowing both parties to contest their claims respectively within time bound manner. Hence, I proceed to pass the following order :

ORDER

- I. The appeal is partly allowed.
- II. The impugned order dated 01.08.2012 passed in S.C.C. No. 3819 of 2009 by learned Chief Judicial Magistrate, Aurangabad is hereby quashed and set aside.
- III. The matter is remanded back to the trial court.
- IV. Both parties to appear before the trial court on 17.07.2025.
- V. The trial court to draw a calender of trial and, after giving opportunity to both sides to adduce evidence, make endeavour to dispose of the complaint preferably within a period of four months from the date of first appearance of the parties.
- VI. The appeal is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]