



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPEAL NO. 925 OF 2024

Subhash s/o Vishwnath Ektare,
Age : 62 years, Occ. Service,
R/o. Vivekanand Puram, Latur,
Tq. & Dist. Latur.

**...Appellant
[Orig. Complainant]**

Versus

Anand s/o Sudarshan Dharmadhikari,
Age : __ years, Occ. Business,
R/o. Behind Sailani Baba Dargah,
Gopal Nagari, Khopegaon, Latur,
Tq. & Dist. Latur and
R/o. Kanheyya Pan Stall, Western Side of Central Bus Stand,
Near Raigad Permit Room,
Gandhi Market, Main Road, Latur.

**....Respondent
[Orig. Accused]**

.....
Mr. Rahul P. Cheble – Advocate for the Appellant
Mr. P. B. Kulkarni – Advocate for sole Respondent
.....

CORAM : NEERAJ P. DHOTE, J.

DATE OF RESERVING THE JUDGMENT : 17.04.2025
DATE OF PRONOUNCING THE JUDGMENT : 05.05.2025

JUDGMENT : -

1. This is an Appeal under Section 378(4) of the Code of Criminal Procedure, 1973 [hereinafter referred to as ‘Cr.P.C.’] against the order dated 17.05.2024 passed by the learned Judicial Magistrate First Class, (Court No.1), Latur, in S.C.C. No. 382 of 2017, dismissing the

Complaint filed by the Appellant against the sole-Respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as the 'NI Act'], for want of prosecution.

2. Heard the learned Advocate for the Appellant and the learned Advocate for the sole Respondent. Perused the papers on record.

3. It is submitted by the learned Advocate for the Appellant that, only on two [2] dates, the Appellant could not attend the proceedings before the learned Magistrate, and the impugned order came to be passed by observing that the Appellant was not interested to proceed with the matter. The Appellant could not attend the said dates due to his old age. He submits that an opportunity be given to the Appellant to contest the matter on merits and the same be remanded to the learned Trial Court.

4. It is submitted by the learned Advocate for the sole Respondent that, the Appellant was not diligent in pursuing his Complaint and that the time of learned Trial Court was wasted. The Complaint was seven [7] years old and as per the settled principles of law, the offence punishable under Section 138 of the NI Act, is to be tried expeditiously. Hence, the Appeal may be dismissed.

5. The judgment cited by the learned Advocate for the sole Respondent in *Jamboo Bhandari Versus Madhya Pradesh State Industrial Development Corporation Limited and Others*, 2023 DGLS(SC) 994, shows that the learned Magistrate had convicted the Appellants therein. There is also a reference to paragraph number 8 of the decision in *Surinder Singh Deswal @ Col.S.S.Deswal and Others Vs. Virender Gandhi*, (2019) 11 SCC 341, wherein it is observed that the NI act was amended from time to time so as to provide, *inter alia*, speedy disposal of cases relating to the offence of dishonour of cheques. The another decision is *Indian Bank Association and Others Versus Union of India and Others*, 2014 DGLS(SC) 389, wherein directions were issued to the Criminal Courts dealing with Section 138 of NI Act cases to dispose off all such cases expeditiously.

6. The learned Advocate for the Appellants relied upon various decisions of this Court in Criminal Appeals, wherein orders of dismissing Complaints for the offence punishable under Section 138 of the NI Act for want of prosecution were challenged and the same came to be set aside by remanding back the matters to the concerned Magistrate for disposal in accordance with law.

7. Coming to the case at hand, the order impugned reads thus:-

“ORDER BELOW EXH. 1.

The matter is fixed for evidence. Case is called out, complainant and his ld. Counsel is absent. Accused has filed exemption application at Exh.35, which is granted. On perusal of roznama it reveals that, the complainant has failed to lead steps evidence from 24/11/2017. Matter is more than 07 years old. After giving sufficient opportunities to the complainant, he has failed to lead evidence from date of recording of plea. It means, the complainant is not interested to proceed with the matter. Therefore, I pass following order : -

ORDER

- 1] Complaint is dismissed for want of prosecution U/Sec. 256 of Cr.P.C.
- 2] Accused is acquitted.
- 3] Bail bonds stands forfeited.
- 4] Proceeding is hereby closed.

Sd/-

Date: 17/05/2024.

Judicial Magistrate First Class
(Court No.1), Latur.”

8. The copies of Roznamas made available by the learned Advocate for the Appellant shows that the Complaint was listed on the Board dated 17.01.2024 for leading evidence. Thereafter, the matter was fixed on 11.03.2024 and 05.04.2024 for leading evidence, and eventually, on 17.05.2024, when the matter was listed, the impugned Order came to be passed. The Roznama prior to 17.01.2024 shows that the Applications were made for issuing warrant against the sole Respondent, and Application for cancellation of warrant were made etc. The Roznama dated 14.12.2023 shows that one Advocate filed a *Vakalatnama* for the sole Respondent and the Roznama dated 17.01.2024 shows that another Advocate filed a *Vakalatnama* for the sole Respondent in the said case. On going through the copies of Rozanamas, it is seen that though the matter was seven [7] years old, it was fixed for leading evidence in January–2024, and the impugned Order came to be passed in May–2024.

The impugned Order shows that the Application for exemption by the sole Respondent was made and it was allowed. These aspects do not lead to the conclusion that, the Appellant was not interested to proceed with the matter. In these facts and circumstances of the case, the Appellant needs to be given an opportunity to prosecute his Complaint in accordance with law by setting aside the impugned Order. Hence, the following order : -

ORDER

- [i] The Appeal is allowed.
- [ii] The impugned Order dated 17.05.2024 passed by the learned Judicial Magistrate First Class, (Court No.1), Latur in S.C.C. No. 382 of 2017, is quashed and set aside.
- [iii] S.C.C. No. 382 of 2017 is restored to the file of concerned Court, i.e. Judicial Magistrate First Class, (Court No.1), Latur, for dealing with the same in accordance with law.
- [iv] Both the parties shall appear before the learned Magistrate on 09th June, 2025, and co-operate the learned Magistrate for expeditious disposal of the matter.

[NEERAJ P. DHOTE]
JUDGE