



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO.30 OF 2018.

M/s. Home Shoppe Pvt. Ltd.,
A company incorporated under the
Indian Companies Act, 1956 and having
Its registered office Unique Apartment,
Ground floor, Near All India Radio,
Altinho, Panaji-Goa Through its
authorized officer Shri Savio Tilak
Gracious, son of Shri Gracious,
Major in age, married, Indian National,
Businessman, having office at Near
All India Radio, Altinho, Panaji-Goa. Appellant.

Versus

1. Shri. Davendra Kavlekar,
Proprietor of M/s. Kavlekar Electronics,
Son of Shri Kavlekar, Major in age,
married, Businessman,
Indian National, resident of C/o. Ram
Satelkar, Povacao, Moira, Bardez, Goa.,
2. State of Goa, Through its
Public Prosecutor, Panaji - Goa.Respondents.

Mr Shivan Desai, Ms Maria Viegas, Ms Riya Amonkar, Advocates
for the Appellant.

CORAM: SHREERAM V. SHIRSAT, J.

DATE: 1st October 2025

JUDGMENT

1. The Appellant has approached this Court challenging the judgment and order dated 4.3.2016 passed by the Learned Judicial Magistrate First Class at Panaji in Criminal Case No. OA/259/2012/B whereby the complaint filed by the Appellant through its officer under Section 138 of the Negotiable Instruments Act, 1881 came to be dismissed for non-prosecution. The Appellant prays for quashing and setting aside the said order dated 4.3.2016, wherein the learned Magistrate was pleased to dismiss the complaint for non-prosecution and the proceedings have been closed.

2. Before advertng to the impugned order, brief facts leading to the filing of the present complaint are stated as under:-

- a. It is the case of the Appellant that, the Respondent no.1 who is the original Accused in Criminal Case No. OA/259/2012/B filed before JMFC at Panaji had entered into a business agreement with the present Appellant for purchase of electronic products on credit facilities from the store of the Appellant. The case of the Appellant is that the Respondent no.1 had purchased several electronic items and in part consideration had issued a cheque and when the

same was presented for payment with the bank, it was returned to the Appellant with the endorsement “funds insufficient”. It is the case of the Appellant that a legal notice demanding the payment of said cheque amount was made; however, the Respondent no.1/original Accused failed to discharge his liability and he did not comply with the notice.

b. It is the case of the Appellant that, after complying with the requisite compliances as required under Section 138 of the NI Act, the Appellant company filed a complaint under Section 138 of the NI Act before the learned JMFC, at Panaji being Criminal Case No.OA/259/2012/B.

3. The said complaint bearing Criminal Case No.OA/259/2012/B has been dismissed for non-prosecution for which the Leave to Appeal and Appeal were filed by the Appellant who is the original Complainant. This Court vide order dated 4.4.2018 was pleased to grant Leave to Appeal and Appeal was admitted.

4. As the Appellant had not placed on record the entire roznama of the Trial Court and the roznama of only two dates were annexed, the Counsel for the Appellant was called upon to

place on record the typed copy of the entire roznama, which has been done in the due course.

5. The Appellant being a Private limited company is represented through Authorised Officer. The Appellant herein is also referred to as “the Complainant” and the Respondent no.1 is referred to as “the Accused” for the sake of brevity

6. I have gone through the Roznama. From the roznama placed on record, it can be seen that the complaint came to be dismissed on 4.3.2016, on the ground that when the matter was called out, the Complainant was absent and even his advocate was absent and on last 4 occasions also Complainant was absent and had not taken any steps to serve the Accused and therefore the complaint was dismissed for non-prosecution and the proceedings were closed.

7. It will therefore be necessary to peruse the roznama of some of the earlier dates in the Trial Court to find out whether the Appellant (Complainant) and his Advocate were consistently remaining absent so that it could be inferred that the Appellant (Complainant) was not interested in diligently prosecuting his complaint or that the Appellant (Complainant) has missed few dates but has a valid reason for his absence.

8. The roznama shows that till 28.8.2015, the Complainant was progressively proceeding with the complaint, either in person or through his Advocate and the Respondent No.1, was also attending the Court proceedings after issuance of process. On 28.8.2015, the Complainant and his Advocate were absent. On 14.9.2015, although the Complainant was absent, he was represented by his Advocate who tendered exemption on behalf of the Complainant and the matter was posted for evidence. On 12.10.2015, the Complainant was present along with his Advocate and time was sought by the Accused. On 26.10.2015, the Complainant was present with his Advocate, and as the Accused was absent, bailable warrant was issued against the Accused and the matter was adjourned. On 27.11.2015, the Complainant was absent, however, he was represented by his Advocate who filed an exemption on his behalf. The roznama also records that NBW was to be issued after payment of the process fee by the Complainant. On 8.1.2016, the Complainant was absent, and so was the Accused. The roznama does not record whether the Advocate for the Complainant was present or not. On 13.1.2016, the NBW was issued without payment of the process fee. On 1.2.2016, the Complainant and his Advocate were absent, and the NBW had

returned unexecuted and there was direction to the Complainant to take steps within 2 days. On 26.2.2016, the Complainant and his Advocate were absent and the Trial Court has recorded that last two occasions Complainant has not taken any steps and therefore had given last and final opportunity and the matter was adjourned to 4.3.2016. On 4.3.2016, the Complainant and his Advocate were absent and the Trial Court observing that Complainant remained absent for last 4 occasions and has not taken steps to serve the Accused and hence, the complaint was dismissed for non-prosecution.

9. The Appellant in his Appeal Memo has stated reasons because of which the Appellant (authorised officer) could not remain present, which led to dismissal of the complaint.

10. The Appellant has stated that on 27.11.2015, he was not present but his Advocate was present who filed exemption application on his behalf and as recorded by the learned JMFC, the warrant against Respondent no.1 could not be executed and fresh warrant was issued and matter was adjourned to 8.1.2016 for the appearance of the Respondent no.1/Accused. It is submitted that the Advocate for the Appellant lost track of the matter and did not take note of the same. It is also submitted that the Advocate

took note of the date only on 17.2.2016 through online case status and it was noted that the next date fixed by the Court was 25.2.2016. It is further submitted that on 25.2.2016 the concerned Advocate could not appear nor instruct/inform anybody about the matter as he was severely unwell. Further on 8.3.2016, Advocate for the Appellant enquired with the office of the Court of the Trial Judge when he realised that the matter was not on board and was dismissed. In these circumstances, the Appellant has therefore submitted that due to aforementioned reasons, the complaint came to be dismissed and has prayed for restoration of the complaint and assured that the Appellant through the authorised officer, would be diligently pursuing the complaint henceforth.

11. From the record, it can be seen that the steps were taken to serve the Respondent no.1. As the Respondent no.1 could not be served, the alternate mode of service was also availed of. This Court vide order dated 10.8.2018, has recorded that Respondent no.1 is duly served by affixation, and despite service, Respondent no.1 is absent. The matter was thereafter placed in the final hearing board.

12. The learned Counsel Mr S. Desai for the Appellant who submitted that apart from the grounds stated in the application,

the Appellant now wants to seriously pursue the complaint and assures that the Complainant would hereinafter diligently attend the Trial Court and wants to take his complaint to its logical end and, therefore, in the interest of justice the order be set aside.

13. I have heard the learned Counsel and have also perused the grounds mentioned in the application. The Trial Court ought to have appreciated that the Complainant, either in person or through his Advocate, were remaining present earlier and were diligently pursuing the complaint but for few dates when both of them were not present. The Trial Court, taking into consideration the stage of the matter, could have afforded one more opportunity to the Complainant before dismissing the complaint. The Court ought to have adopted a liberal approach as the Appellant and his Advocate were earlier attending, as can be seen from the earlier part of the roznama. Merely on a few occasions, if both were absent that by itself would not be a sufficient cause to dismiss the complaint for non-prosecution. The matter was slated for evidence and the process of securing presence of the Accused was going on.

14. Considering the fact that the complaint was dismissed for non-prosecution and the proceedings were closed, in my opinion, the Appellant has made out sufficient grounds so as to warrant

interference in the order dated 4.3.2016 passed by the Trial Court. Therefore, in my opinion, taking overall view of the matter and the facts of the case, it would be just and proper to afford reasonable opportunity to the Appellant to present the matter on merits.

15. A profitable reference can be made to the case of *Shri Shaikh Akbar Talab Vs Shri A. G. Pushpakaran and Another*,¹ wherein it has been observed that “the principles of natural justice are required to be followed by giving an opportunity to the Appellant/Complainant to prosecute the complaint on merits. The principles of natural justice would be the cardinal principle of law and the backbone of the judicial process. Opportunity of hearing and right to present the case are statutory incorporation of natural justice by mandating procedural safeguards, and therefore, the Court below ought not to have taken a harsh and hyper-technical view by dismissing the complaint for want of prosecution and accordingly violates procedural safeguards.”

16. I, therefore, deem it appropriate to set aside the impugned order and restore the complaint back to the files of the Trial Court.

17. Hence the following order:-

ORDER

- i. The appeal is allowed.
 - ii. The impugned order dated 4.3.2016, passed by learned JMFC, Panaji in Criminal Case No.OA/259/ 2012/B dismissing the said complaint for non-prosecution is quashed and set aside. The Criminal Case No.OA/259/2012/B is restored to its original stage and the matter is remanded back to the learned JMFC, Panaji to decide the same on its own merits.
 - iii. The Appellant shall proceed without seeking any further adjournment and cooperate with the learned JMFC, Panaji in expeditious disposal of the complaint.
- 18.** Appeal stands disposed of accordingly.

SHREERAM V. SHIRSAT, J.

¹ *2018 All MR (Cri) 1208*