



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

CRIMINAL APPLICATION (APPA) NO. 847 OF 2025
IN
CRIMINAL APPEAL (ST) NO. 533 OF 2023

Rampal Mataprasad Yadav Vs. Dr. Ulhas Jairam Dudhekar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Atharva N. Doye, Advocate h/f Mr. D.N. Mathur,
Advocate for applicant.

CORAM : M.M. NERLIKAR, J.

DATE : 27.11.2025

Heard the learned counsel for the applicant.

None for respondent.

2. Upon hearing the learned counsel for the applicant, leave is granted to prefer the appeal. Office is directed to register the appeal.

3. The application is disposed of accordingly.

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Admit. The appeal is taken up for final hearing.

2. By the present appeal, the appellant challenges the order below Exhibit 1 dated 30.07.2016 passed by the

learned Judicial Magistrate First Class, (Spl. Court for cases under Section 138 of N.I. Act) Nagpur, where the Court in SCC No.5243/2014 dismissed the complaint filed for the offence under Section 138 of the Negotiable Instrument Act for want of prosecution thereby acquitting the accused. While dismissing the complaint, the Court has observed that inspite of giving several opportunities to the complainant, the case has not proceeded further and therefore, the conduct of the complainant shows that he does not want to proceed with the case and therefore, the Court was constrained to dismiss the complaint under Section 256 of the Cr.P.C.

3. The learned counsel appearing for the appellant submits that due to unavoidable reasons, he was not able to proceed further, as the appellant went to his hometown in the State of Uttar Pradesh, wherein the appellant's old aged parents, were not well during the period between July 2015 to October 2015. Therefore, he was taking care of his old aged parents. The case was instituted in Nagpur and therefore, he was unable to attend the Court on each and every date. Even during that period, he suffered a huge loss to business as he was running the business in Nagpur. Accordingly, he decided to shift his parents to Nagpur so that he can take care of his business as well as his parents.

4. Thereafter, in the month of December 2015, his father expired and the death certificate to that effect is placed on record. He further submits that he has also placed on record the medical certificate issued by Anuradha Back Pain and Advance Orthopaedic Surgery Center, Nagpur, wherein it was certified that the appellant is suffering from Bilet OA Knee with severe back-pain and he was in need of complete bedrest from 1st March, 2016 to 30th July, 2016.

5. The learned counsel further submits that the cheque amount is of Rs.4,50,000/-and the Court ought to have decided the case on the basis of merits. He submits that he would be readily available for further proceeding with the matter if the order impugned is quashed and set aside.

6. Though the notice was issued to the respondents and that notice was duly served, the respondent chose not to appear, and therefore, the present matter is proceeded without respondent.

7. Upon hearing the learned counsel for the appellant, admittedly, the impugned order was passed under Section 256 of the Code of Criminal Procedure, thereby dismissing the complaint for want of prosecution and accordingly, the accused was acquitted. No doubt, there are lapses on the part of the appellant, however,

considering the explanation which is offered by the appellant, the same is accepted and the appellant should get an opportunity to proceed with the matter and it is expected that the matter should be heard and decided on the basis of merits. It is necessary to mention at this juncture that dismissal shall not be on the basis of technical ground, however, rights of parties shall be crystal on the basis of merits.

8. Considering the above facts and circumstances, I am inclined to allow the present appeal. Hence, the following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 30.07.2016 below Exhibit 1 passed by the Judicial Magistrate First Class, Court No.26, (Spl. Court for cases u/s 138 of N.I. Act), Nagpur, is hereby quashed and set aside subject to cost of Rs.20,000/-.
- (iii) The costs to be paid to the respondent.
- (iv) The complaint is restored to its original stage.
- (iv) The appeal is disposed of accordingly.

(M.M. Nerlikar, J.)