



Judgment

Cr.APPEAL-138-2014

1

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

CRIMINAL APPEAL NO. 138 OF 2014

...

Shri Israr Ahmad S/o Mohammad Ismail,
Aged about 53 years, Occu. Service,
R/o Quarter No. M-28, Ramnagar Ghugus,
Tah. & Dist. Chandrapur.

... **APPELLANT**

- - V E R S U S - -

Shri Abdul Naseer Abdul Ajij,
Plot No. 5, Pension Nagar,
Ahabab Coloney, Police Line, Takli,
Nagpur, (M.S.) Pin-440013.

... **RESPONDENT**

Mr. V.N. Morande, Advocate for the Appellant.

Mr. Rahul S. Kurekar, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 16, 2025.

ORAL JUDGMENT :

2

Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. Admit.

3. The present appeal is filed for quashing and setting aside the order dated 16/08/2013 passed below Exh.-1 by the learned Judicial Magistrate First Class, Court No.3, Chandrapur, in Summary Criminal Case No.161/2012, whereby the learned Magistrate dismissed the complaint for want of prosecution, resulting in the acquittal of the accused.

4. The complainant and respondent entered into an agreement for sale of Plot No.6 situated at Khasra No.107/1, P.H. No.11, at Mouza Nara, amounting to Rs. 1,60,000/-. The complainant made part payments, but the respondent failed to execute the sale deed. In June, 2011, the respondent issued three cheques amounting to Rs. 60,000/- each, but out of the

3

same one cheque bearing No.091026 was dishonoured when deposited in December, 2011. Pursuant to same, legal notice was sent on 23/12/2011, but it returned unclaimed on 30/01/2012. A criminal complaint under Section 138 of the Negotiable Instruments Act was filed in February, 2012. Subsequently, all the cheques dishonoured. Despite efforts to serve summons, the respondent avoided court proceedings, and three criminal cases were filed for dishonoured cheques. The respondent agreed to settle out of court, and the complainant withdrew one case (No. 163/2012) upon receiving payment, resulting in the respondent's acquittal on 21/03/2012. The complainant did not press for further action in the remaining cases, seeking an amicable settlement. On 16/08/2013, the Court acquitted the respondent due to non-prosecution. The complainant now challenges the acquittal, claiming it was due to a procedural default and seeks to have the acquittal set aside for a fresh trial.

4

5. The learned counsel appearing for the appellant submits that three complaints were filed by the present appellant against the respondent, out of which two complaints were settled between the parties. So far as the present case is concerned, settlement talks were going on, however, before any settlement could be arrived at, the Court passed the impugned order dated 16/08/2013. He further submits that the Trial Court ought not to have passed the said order when two complaints had already been settled and the third complaint (the present complaint) was also likely to be settled. The steps were not taken in the matter only because settlement talks in all three cases were going on, which resulted in the settlement of two cases. Therefore, according to the learned counsel, the Trial Court committed an error in dismissing the complaint in default and acquitting the accused under Section 256 of the Code of Criminal Procedure.

6. The learned counsel appearing for the respondent

supported the impugned order. However, he submits that if this Court comes to the conclusion that the order is required to be set aside, under such circumstances, costs may be imposed.

7. The learned counsel for the appellant relied on the judgment of this Court in the case of ***Shri Shaikh Akbar Talab VS Shri A.G. Pushpakaran & Another, 2018 ALL MR (Cri) 1208***, and referred to the observations made in Paragraph No.14, which are as follows:

“14. In above referred case cited (supra) the complaint was dismissed under Section 256 of CrPC by the learned Magistrate due to absence of the complainant. It is held that principles of natural justice are required to be followed by giving an opportunity to the complainant to prosecute the complaint on merits as well as an opportunity is to be given to the accused to contest the complaint on merits. Therefore, the matters were restored by quashing and setting aside the impugned orders.”

8. Upon perusal of the record and in light of the law laid

6

down by this Court in the case of *Shri Shaikh Akbar Talab (supra)*, I am of the considered view that the Learned Trial Court ought not to have dismissed the complaint for want of prosecution, nor should have acquitted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

9. Considering the fact that out of three complaints which are filed by the present appellant, two are settled and in the third complaint, the talks were going on. Considering the attending circumstances appearing on record, it would be just and proper to afford a reasonable opportunity to the appellant to pursue his cause on merits. The observations of this Court in the case of *Shri Shaikh Akbar Talab (supra)*, are relevant wherein it is held that the principles of natural justice are required to be followed by giving an opportunity to the complainant to prosecute the complaint on merits, as well as, an opportunity is to be given to the accused to contest the

7

complaint on merits. The principles of natural justice is the cardinal principle of law and backbone of 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. For the reasons stated above, I deem it appropriate to allow the appeal. Hence, the following order:-

ORDER

- (i) The Appeal is **allowed**;
- (ii) The impugned order passed by the learned Judicial Magistrate First Class, Court No.3, Chandrapur, in Summary Criminal Case No.161/2012, dated 16/08/2013, dismissing the said complaint in default under Section 256 of the Code of Criminal Procedure and consequently

8

acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, is quashed and set aside.

(iii) Summary Criminal Case No.161/2012, stands restored to file at its original stage and the matter is remanded back to the learned Trial Court to decide the same afresh, on its own merits.

(iv) The parties are directed to remain present before the Learned Trial Court on 08/01/2026.

(v) The appellant shall proceed with the matter without seeking any adjournment and shall co-operate with the Trial Court. The Trial Court may grant adjournment in exceptional circumstances.

(vi) The above order is subject to payment of costs of Rs.5,000/-. The cost shall be deposited by the appellant in the Trial Court. The said cost shall be paid to the respondent.

(vii) The appeal is **disposed of**, accordingly.

[**M. M. NERLIKAR, J**]