



Judgment

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

CRIMINAL APPLICATION [APPA] No. 833/2025.
(CRIMINAL APPEAL STAMP NO.951/2025.)

Nirmal Ujjawal Credit Cooperative Society
Ltd., [Registration No. M.S.C./C.R./272
/2008], Branch Kondhali, Tahsil Katol,
District Nagpur, through its Recovery Officer
and Authorized Signatory Shri Anil s/o
Nanaji Dhore, Aged 43 years, Occupation
Service, resident of Kondhali, Tahsil Katol,
District Nagpur 441103.
Mobile No.8600145909
[P.S.Kondhali, Tahsil Katol,
District Nagpur.]

... **APPLICANT.**

VERSUS

1.Mohammad Mohasin Khuddus Musani,
Aged Major, Occupation – Business,
Resident of Deshmukh Layout,
Kondhali, Tahsil Katol, District
Nagpur 441103.
[P.S.Kondhali, Tahsil Katol,
District Nagpur.]

2.The State of Maharashtra,
through P.S.O. Kondhali Police
Station, Kondhali, Tahsil Katol,
District Nagpur 441103.

... **NON-APPLICANTS.**

Rgd.

Mr. S.G. Malode, Advocate for the Applicant/Appellant.
Mr. G.S. Umale, A.P.P. for Non-applicant/Respondent No.2.
None for Non-applicant/Respondent No.1 – Served.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 11, 2025.

ORAL JUDGMENT :

Heard. Leave granted.

Admit.

By consent of learned Counsel appearing for the parties,
the matter is taken up for final disposal.

2. The present appeal is preferred by the appellant against the order dated 29.04.2024 passed by the Judicial Magistrate, First Class, Katol below Exh.1 in S.C.C.No.695/2021, by which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, came to be dismissed in view of Section 256 of the Code of Criminal Procedure, and the accused is acquitted of the

Rgd.

offence punishable under Section 138 of the Negotiable Instruments Act on the ground that the complainant failed to take any steps to serve the present respondent.

3. The learned Counsel appearing for the appellant submits that the appellant had appeared along with his Advocate in the matter on number of occasions, however, merely being not present on few dates, that by itself would not be sufficient to dismiss the complaint under Section 256 of the Code of Criminal Procedure. He further submits that if the roznama of the case is perused, it shows that the case was dismissed on 29.04.2024, however, before that the complainant was present along with his Counsel on 05.02.2024. It is submitted that the matter was ordered to be placed before the Lok Adalat on 09.12.2023, however, it could not be settled. The learned Counsel further submits that he may be granted one chance to take steps.

4. Considering the fact that the appellant is genuinely pursuing his complaint, in my opinion one chance is required to be

Rgd.

given to the appellant to take further necessary steps, since it can be gathered from the roznama placed on record that the appellant has appeared in the matter on many occasions.

5. It will be useful to refer to the judgment of this Court in the case of **Shaikh Akbar Talab .vrs. A.G. Pushpakaran & Another (2018 ALL MR (Cri) 1208)**, and refer 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.”

Upon perusal of the record and in light of the law laid down by this Court in the case of 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.

6. Considering above facts and circumstances, and accepting the statement made by the appellant that the appellant is ready and willing to take necessary steps in the matter, I am inclined to grant the relief to the appellant, by quashing and setting aside the impugned order. However, this order shall be subject to payment of costs of Rs.10,000/- to the respondent by the appellant. The costs be deposited with the trial Court and after its deposit the respondent will be at liberty to withdraw the same. In view of above, the following order is passed.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The order dated 29.04.2024 passed by the Judicial Magistrate, First Class, Katol below Exh.1 in S.C.C.No.695/2021, is hereby quashed and set aside.

Rgd.

- (iii) The matter is restored back to the file of Judicial Magistrate, First Class, Katol for its disposal in accordance with law.
- (iv) This order is subject to payment of costs of Rs.10,000/- by the appellant, which the appellant shall deposit with the trial Court within next 7 working days. If the costs are not deposited within the stipulated time, the court below may pass appropriate order. If the costs is deposited, the respondent No.1 – Mohammad Mohsin is at liberty to withdraw the same.

JUDGE