



Judgment

Cr.APPEAL-68-2014

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

CRIMINAL APPEAL NO. 68 OF 2014

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Silver System Partnership firm,
having its office/shop at Silver Place,
Shop No. 1 and 2 Dhantoli Nagpur,
Through its Power of Attorney Holder,
Shri Prakash S/o Bhagwandas Kishnani,
Aged About 39 Years, Occ:- Service,
R/o 12 Vishwas nagar,
Near Jaripataka Police Station,
Nara Road, Nagpur.

...

APPELLANT

- - V E R S U S - -

- 1] State of Maharashtra,
Through A.P.P., Nagpur.
- 2] Roman Incorporation,
Prop Firm, Having Shop at 2nd Floor,
Shubhlaxmi Complex,
B/H Rajkamal Complex, Dhantoli Nagpur.
- 3] Rohit Jaiswal,
Aged:- Major, Occ:- Business,
Having Shop at 2nd Floor,

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Shubhlaxmi Complex behind Rajkamal Complex,
Dhantoli, Nagpur.

... **RESPONDENTS**

Ms. M.S. Gulati, Advocate h/f. Mr. A.K. Bhangde, Advocate for
the Appellant.

None for the Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 01, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant. Though
the respondent is served, none appeared on his behalf.

2. Admit.

3. The present appeal is filed for quashing and setting
aside the order dated 14/02/2012 passed below Exh.-1 by the
learned Judicial Magistrate First Class, Nagpur, in Summary
Criminal Case No.13655/2011, whereby the learned Magistrate

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dismissed the complaint for want of prosecution, resulting in the acquittal of the accused.

4. The appellant-complainant, a partnership firm dealing in computer spare parts, supplied goods to the respondents, who run *Roman Incorporation*. An amount of Rs.4,92,600/- remained outstanding. For part payment, the accused issued a cheque dated 24/11/2010 for Rs.4,92,500/-, which was dishonoured on 13/04/2011 for “insufficient balance.” Statutory notice dated 26/04/2011 was duly served, but payment was not made. The complainant filed Summary Criminal Case No. 13655/2011 under Section 138 of the N.I. Act. However, on 14/02/2012, the complaint was dismissed for default and the respondent came to be acquitted.

5. The impugned order is dated 14/02/2012, wherein the complaint of the appellant was dismissed in default for non-prosecution and the accused was acquitted under Section 256

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of the Code of Criminal Procedure, 1979. After perusal of the record, it appears that the evidence was led by the petitioner on 07/01/2012, however, the case was put up for cross-examination of the complainant. On 13/01/2012 and 01/02/2012, the appellant has applied for adjournment by filing an application. Accordingly, adjournment applications were allowed and adjournment was granted. On 14/02/2012, the case was again listed, however, on that date, neither the counsel, nor the complainant was present, and accordingly, the trial Court dismissed the complaint under Section 256 of Cr.P.C.

6. It further appears from the record that the appellant filed an application on same day, i.e., on 14/02/2012, for restoration of the complaint, however, even that application was rejected. As was argued by the learned counsel, that the absence was not intentional or deliberate, however, merely absent on one or two occasions would by itself is not sufficient

to dismiss the case.

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 down by this Court in the case of ***Shri Shaikh Akbar Talab***

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(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 grounds on which the present appeal is filed that on 07/01/2012 the evidence was led and on 13/01/2012 and 01/02/2012, adjournment was sought, and accordingly it was granted and merely on 14/02/2012 the counsel and the complainant was absent, that by itself, is not sufficient to dismiss the complaint, however, the *bona fide* to pursue the complaint can be gathered that on the very date, i.e., on 14/02/2012, application for restoration was filed, however, as it was not maintainable, the application was rejected.

10. Considering the attending circumstances appearing on record, it would be just and proper to afford a reasonable

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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 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**;

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(ii) The impugned order passed by the learned Judicial Magistrate First Class, Nagpur, in Summary Criminal Case No.13655/2011, dated 14/02/2012, dismissing the said complaint in default under Section 256 of the Code of Criminal Procedure and consequently 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.13655/2011, 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 07/01/2026.

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

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may grant adjournment in exceptional circumstances.

(vi) The above order is subject to payment of costs of Rs.10,000/-. 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**]