



Judgment

32-Cr.APPA-131-2025

1

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

CRIMINAL APPLICATION [APPA] NO.131 OF 2025

IN

CRIMINAL APPEAL [STAMP] NO. 1072 OF 2025

...

Vinod S/o Deorao Nagrale,
Aged about 47 years, Occ.- Service,
R/o Ambedkar Layout, Water Tank,
Gutkala Ward, Chandrapur-442402.

... **APPLICANT**

- - V E R S U S - -

1] P.R. Dhale @ P.R. Baudhha,
President of Panchasshil Bahuddeshiy Sevabhavi Sanstha,
Address : Gat No. 404,
Behind Lokkuttar Buddha Vihhar, Ajantha Road,
Chowka Aurangabad,
Tal & Dist : Aurangabad.

2] Smt. Asha P. Dhale
Main Administrative the Buddhist International School,
Aurangaabad,
Address : Gat No. 404,
Behind Lokkuttar Buddha Vihhar, Ajantha Road,
Chowka Aurangabad,
Tal & Dist : Aurangabad.

... **NON-APPLICANT**

Mr. Anil A. Dhawas, Advocate for the applicant.
None for the non-applicants.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 20, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the applicant.

2. Admit.

3. The present application is being filed seeking leave to file appeal against the order of acquittal passed in Summary Criminal Complaint No.830/2019 by the Judicial Magistrate, First Class, Rajura, District Chandrapur, on 06/09/2024, by which the complaint came to be dismissed for want of prosecution, resulting into acquittal of the accused. Prayer in the appeal is to quash and set aside of the said order and restore the same to the original file.

4. Brief facts of the case are as under :

3

The non-applicants/accused are President and Administrative Head of “Panchasshil Bahuddeshiy Sevabhavi Sanstha, Aurangabad” which has started a School at Chandrapur. The said school was required to be closed due to shortage of students. There was an agreement in between the applicant and non-applicants, and as per the said agreement, the accused persons were to return an amount of Rs.3,50,000/- to the applicant, if the school is required to be closed. The said amount was deposited by the applicant with non-applicants towards security. In lieu of that, the non-applicants issued a cheque bearing No. 398200 drawn on State Bank of India, Rajura Branch amounting to Rs.3,50,000/- towards the repayment of the security deposit. This cheque was dishonoured and despite service of statutory notice dated 25/10/2018, the non-applicants failed to repay the same, therefore, the applicant / complainant initiated aforesaid proceedings on 29/12/2018. Summons were issued to the accused, but they did not appear.

4

5. It was contended on behalf of the applicant that, on 06/09/2024, due to the illness of the complainant's wife, he could not remain present before the Court, as a result of which the learned Trial Court dismissed the complaint under Section 256 Cr.P.C. (corresponding to Section 279 of BNSS) for want of prosecution, which resulted into acquittal of the non-applicants/accused. It is this order, which is subject matter of challenge in this appeal.

6. The learned Counsel for the applicant submits that the absence was neither intentional nor wilful and seeks restoration of the complaint for its adjudication on merits. The learned Counsel has placed reliance on the judgment in case of *Shri Shaikh Akbar Talab VS Shri A.G. Pushpakaran & Another, 2018 ALL MR (Cri) 1208*, particularly paragraph no.14, which are as follows:

“ *In all these cases cited (supra) the complaint was dismissed under Section 256 of CrPC by the learned*

5

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.”

7. This Court, by order dated 13/02/2025 issued notice to the respondents/non-applicants. Despite service, the non-applicants have chosen not to appear. Again on 10/09/2025 one opportunity was given to non-applicants. However, it was made clear that if no one appears for non-applicants on 16/09/2025, the matter will be heard finally. Today also there is no appearance on behalf of the non-applicants. Therefore, considering the fact that the present proceeding pertains to the year 2018, the matter is taken up for final disposal.

8. I have perused the order passed below Exh.1, wherein, the learned Court below was pleased to dismiss the

6

complaint for want of prosecution, and the accused was acquitted. It appears that the said order was passed under Section 256 of the Code of Criminal Procedure. I have also examined the *roznama* produced by the applicant. Perusal of the same shows that on several occasions, the applicant as well as his counsel were present and on few occasions they were absent. It is also noticed that on number of occasions accused persons were absent. The *roznama* reflects that on 22/01/2024, 17/02/2024 and 16/03/2024 the Advocate for applicant was present, however, on 22/04/2024, 20/06/2024 and 12/07/2024 the Applicant and his advocate were absent. Further, it is important to note that the matter was in unready category as warrant was issued against accused / respondent. The matter was posted on 06/09/2024 on which date also there was no appearance of applicant or his Advocate, as a result of which the proceeding was dismissed for want of prosecution and the accused persons were acquitted.

7

9. Considering the fact that the complaint was dismissed for non-prosecution and the accused persons were acquitted under Section 256 of the Code of Criminal Procedure, in my opinion, the applicant has given sufficient explanation so as to warrant interference in the order dated 06/09/2024. As it is noted from the roznama that on certain occasions the complainant was absent, on certain occasions he was present along with his Advocate, and on some dates the Presiding Officer was on leave. On the other hand, the accused were absent throughout and warrant was issued against him, and therefore, matter was in unready category. In this scenario the trial Court ought to have adopted a liberal approach, as the applicant was diligent in prosecuting the matter. Merely on few occasions, if both were absent, that by itself would not be sufficient to pass the order of dismissal for non-prosecution, thereby acquitting the accused persons.

10. Considering the attending circumstances appearing

8

on record, it would be just and proper to afford a reasonable opportunity to the applicant to pursue his cause on merits. Therefore, I am inclined to grant leave to prefer the appeal.

11. It is necessary to mention at this juncture that the learned Magistrate acquitted the accused under Section 256 of the Cr.P.C. as both the applicant and his counsel were absent on last three consecutive dates, which are noted above. However, considering the reasons mentioned by the applicant for his absence which is supported by medical certificate, in my opinion is a sufficient explanation to interfere in the order of dismissal for non-prosecution. It is also pertinent to note that there is no opposition to the reasons which are furnished by the applicant. 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

9

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 incorporations 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 state above, I deem it appropriate to allow the prayer made by the applicant. Hence, the following order:-

ORDER

- (i) The Appeal is **allowed**.
- (ii) The impugned order passed by the Learned Judicial Magistrate, First Class, Rajura, District Chandrapur, in Summary Criminal Complaint No.830/2019, dated 06/09/2024 is hereby quashed and set aside.

10

(iii) Summary Criminal Case No. 830/2019, is restored to file at its original stage.

(iv) The parties are directed to remain present before the Learned Trial Court on 10/10/2025.

(v) The applicant 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 cost of Rs.5,000/-. The cost shall be deposited by the applicant in the Trial Court. The said cost shall be paid to the respondent.

(vii) The appeal is disposed of, accordingly.

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