



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

CRIMINAL APPEAL NO. 144 OF 2013

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NAV BHARAT PRESS, NAGPUR,
ITS REGISTERED OFFICE AT SNEH NAGAR,
CHATRAPATI SQUARE, NAGPUR,
THROUGH ITS MANAGER,
SHRI MAHESH PRASAD GOKUL CHANDRA SARANGI,
AGED 39 YEARS, OCCU: PRIVATE SERVICE,
R/O: FRIENDS COLONY, KATOL ROAD NAGPUR.

... **APPELLANT**

- - V E R S U S - -

- 1] SANJAY LADWAN,
AGED MAJOR, OCCU: BUSINESS,
PROPRIETOR OF GENIUS GROUP,
1ST FLOOR SHREE COMPLEX,
INFRONT OF MARUTI SHOWROOM SATURNA,
AMRAVATI, DISTRICT: AMRAVATI.
- 2] THE STATE OF MAHARASHTRA,
THROUGH POLICE STATION OFFICER RAJAPETH,
AMRAVATI.

... **RESPONDENTS**

Mr. P.P. Salunkhe, Advocate for the Appellant.

None for the Respondent No.1.

Mr. A.M. Joshi, A.P.P. for the Respondent No.2/State.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 25, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant. Though the respondent No.1 is served, none appears on his behalf.

2. Admit.

3. The present appeal is filed for quashing and setting aside the order dated 23/07/2012 passed by the learned Judicial Magistrate First Class, Nagpur, in Summary Criminal Case No. 17193/2010, whereby the learned Magistrate dismissed the complaint for want of prosecution, resulting in the acquittal of the accused.

3**4.** Brief facts of the case are that:

The appellant is a company duly incorporated under the Companies Act, 1956, engaged in the business of printing and publishing newspapers and periodicals, and also undertakes publication of advertisements for its clients. In the ordinary course of business, the appellant published advertisements provided by accused No.1, who is stated to be carrying on business under the name “Genius Group.” The appellant received advertisement materials from the accused on 20/09/2010, 29/09/2010, and 15/10/2010. Corresponding bills were raised, and an amount of Rs. 39,675/- became due and payable. Towards part payment, accused No.1 issued a cheque dated 03/10/2010 for Rs.28,875/- drawn on HDFC Bank, Shankar Nagar Branch, Nagpur. The cheque, when presented, was dishonoured for the reason “insufficient funds.” The appellant immediately informed the accused of the dishonour, but the accused failed to make the requisite payment. The appellant thereafter issued a statutory notice

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dated 02/11/2010 under the Negotiable Instruments Act. Despite due service, the accused did not comply. Consequently, the appellant instituted Criminal Complaint No.17193/2010 before the Judicial Magistrate First Class, Nagpur. The learned Magistrate ordered issuance of summons on 21/03/2011, and the appellant duly paid process fees. The summons, however, returned unserved as the accused was not found at the given address. The appellant thereafter sought verification of the correct address through its Amravati office. Before the appellant could furnish the updated address, the Trial Court recorded that no steps were taken and, on 23/07/2012, proceeded to dismiss the complaint for non-prosecution and acquitted the accused. On 23/07/2012, the learned Judicial Magistrate First Class, Nagpur, in Summary Criminal Case No. 17193/2010, passed the following order:

“ The complainant is absent through called up to this 4.00 pm. No steps are taken in spite of the fact that the specific order is passed on last date the complainant is reluctant to take any steps and proceed further. Hence the

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complaint is dismissed for want of prosecution. The accused is acquitted.”

5. The learned counsel for the appellant submits that the Trial Court erred in dismissing the complaint and acquitting respondent No.1 on the ground that no steps were taken for service, without appreciating the appellant's *bona fide* efforts to secure the accurate and complete address of the respondent No.1. After the summons returned unserved, due to an incomplete address, the appellant immediately instructed its Amravati office to verify the correct address, and the process of obtaining the same was already underway. However, before this could be completed, the Trial Court proceeded to pass the impugned order, thereby depriving the appellant of a fair opportunity to effect service. It is further submitted that the appellant subsequently learnt that the respondent No.1 continues to operate his business from the address mentioned in the complaint but had been deliberately avoiding service. Thus, the Trial Court's observation that the appellant was

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reluctant to take steps is incorrect and contrary to the material on record. The appellant had specifically brought to the Court's notice that additional time was required for address verification, yet the Trial Court mechanically dismissed the complaint. The learned counsel also submits that although the Trial Court recorded failure to take steps, during the pendency of this appeal the appellant was on the verge of securing the correct address, and the respondent has now been duly served with notice in this proceeding. This clearly demonstrates that the appellant has been prosecuting the matter diligently and in good faith. In these circumstances, the impugned order, being premature, harsh, and passed without affording reasonable opportunity, has resulted in serious prejudice to the appellant. It is therefore prayed that the order of dismissal and acquittal be quashed and set aside, and that the appellant be granted a fair opportunity to prosecute the complaint on merits.

6. The learned counsel for the appellant relied on the

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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.”

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

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8. The record shows that the appellant had been diligently prosecuting the complaint and had immediately initiated steps to obtain the correct address of the accused after the summons returned unserved. While this verification process was still underway through the appellant's Amravati office, the Trial Court, without allowing reasonable time for its completion, dismissed the complaint on 23/07/2012 on the ground that steps for service were not taken. The order was passed around 4:00 p.m., and the appellant promptly sought recall of the dismissal on the same day, but even that application was rejected for want of maintainability. During the pendency of the present appeal, the respondent has now been duly served, demonstrating the appellant's *bona fide* and continuous efforts. The impugned order thus appears mechanical and has deprived the appellant of a fair opportunity to proceed on merits.

9. A mere lapse in not furnishing the corrected address

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within a short span could not justify dismissal of the complaint and acquittal of the accused. The appellant had been actively attempting to verify the address and immediately sought restoration of the complaint after its dismissal, but was denied the same. The subsequent service of notice in this appeal further shows that the appellant was not negligent. By overlooking these circumstances and dismissing the complaint without granting reasonable opportunity, the Trial Court has effectively prevented adjudication on merits, causing undue prejudice to the appellant.

10. Considering the circumstances on record, including the appellant's continuous and *bona fide* efforts to prosecute the complaint, it would be just and proper to afford a reasonable opportunity to the appellant to pursue the matter on merits. The dismissal of the complaint by the Trial Court solely on the ground of non-service, without granting sufficient time to complete verification of the accused's address and without

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considering the appellant's prompt application to recall the order, reflects a hyper-technical approach inconsistent with principles of natural justice. The observations of this Court in the case of *Shri Shaikh Akbar Talab* (supra) are relevant, wherein it was held that principles of natural justice require giving the complainant an opportunity to prosecute the complaint on merits, and similarly, an opportunity must be afforded to the accused to contest the complaint. The principles of natural justice are a cardinal aspect of law and form the backbone of judicial process. The right to be heard and to present one's case are statutory incorporations of these principles, and the Trial Court ought not to have taken a harsh and technical view by dismissing the complaint for want of prosecution. 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.17193/2010, dated 23/07/2012 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.17193/2010, 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 18/12/2025.

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(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.1,000/-. 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**]