



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

CRIMINAL APPEAL NO. 265 OF 2014

...

Meghraj s/o. Balkrishna Gajbhiye,
Aged about 47 years, Occ- Private work,
R/o. New Babulkheda,
Three Mouth Flag Square Road, Nagpur.

... **APPELLANT**

- - V E R S U S - -

Mukesh s/o. Devidas Shende
Aged about 30 years, Occ-Private Business,
R/o. New Babulkheda,
Three Mouth Flag Square Road, Nagpur.

... **RESPONDENT**

Mr. B.C. Chandrakapure, Advocate h/f Mr. J.M. Shamkuwar,
Advocate for the Appellant.

Mr. U.A. Sangrame, Advocate h/f Mr. M.P. Kariya, Advocate for
the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 25, 2025.

ORAL JUDGMENT :

Heard the learned counsel for both the parties.

2. Admit.

3. The present appeal is filed for quashing and setting aside the order dated 04/05/2013 passed by the learned 8th Joint Civil Judge Junior Division, Nagpur and Judicial Magistrate First Class, Special Court, Nagpur, in Summary Criminal Case No. 21508/2011, whereby the learned Magistrate dismissed the complaint for want of prosecution, resulting in the acquittal of the respondent.

4. Brief facts of the case are that:

The appellant presented for an encashment Cheque No. 068603 dated 27/06/2011 for an amount of Rs.1,00,000/- to the Bank, issued by the respondent. The said cheque was dishonoured on 06/07/2011 for the reason of 'insufficient funds'. Upon dishonour of the cheque, the appellant issued a

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statutory notice dated 22/07/2011 through Registered A.D., which was duly served upon the respondent on 25/07/2011. As the respondent failed to make the payment within the statutory period of 15 days, the appellant instituted a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 before the Court of the Additional Chief Judicial Magistrate, Nagpur. The Trial Court, by order dated 21/03/2012, issued summons to the respondent, who thereafter entered appearance. The appellant tendered his evidence on affidavit, and the matter was posted on 04/05/2013 for further evidence. On 04/05/2013, the appellant failed to remain present before the Trial Court up to 4:15 p.m., allegedly due to a mechanical breakdown of his two-wheeler. Upon repairing the vehicle, the appellant immediately proceeded to the Court, where he came to know that the Trial Court has passed an order acquitting the respondent under Section 256 of the Code of Criminal Procedure for non-prosecution. On the same day, the appellant moved an

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application seeking restoration of the complaint and permission to lead further evidence, along with a separate application seeking permission to deposit the cost of Rs.500/- imposed by the Trial Court. The Trial Court decided the restoration application on 06/05/2013 and the same was rejected. Aggrieved thereby, the appellant has preferred the present appeal, contending that the acquittal under Section 256 Cr.P.C. was not on merits and that his absence was neither deliberate nor intentional, but attributable to circumstances beyond his control. On 04/05/2013, the learned 8th Joint Civil Judge Junior Division, Nagpur and Judicial Magistrate First Class, Special Court, Nagpur, in Summary Criminal Case No. 21508/2011, passed the following order:

“ 1] The complaint is dismissed u/s 256 of Cr. P. C.

2] The accused is acquitted and his bail bonds are cancelled.”

5. The appellant challenges the acquittal order dated 04/05/2013 on the ground that, it is legally unsustainable and

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has been passed without affording a fair and reasonable opportunity to prosecute the complaint. It is submitted that the appellant had already tendered his evidence on affidavit and the matter stood posted for further evidence. On the said date, the appellant could not remain present before the Trial Court owing to an unexpected mechanical failure of his two-wheeler, and after getting the vehicle repaired, he proceeded to the Court where he was informed that the complaint has been dismissed and the respondent stood acquitted under Section 256 Cr.P.C. The appellant contends that the order was passed in undue haste and prior to the rise of the Court, thereby depriving him of an effective opportunity to lead his remaining evidence. It is urged that the absence was neither intentional nor deliberate, and the Trial Court mechanically proceeded to record the acquittal on considerations of pendency and alleged hardship to the respondent, without appreciating the circumstances which occasioned the appellant's temporary absence. In view of these factors, the learned Trial Court did

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not follow the procedure required to ensure a fair opportunity to the appellant, resulting in a dismissal that appears to be inconsistent with the principles of natural justice.

6. 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.”

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***

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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.

8. The record reflects that the appellant had been regularly prosecuting the complaint and had already placed his evidence on affidavit before the Trial Court. When the matter was listed on 04/05/2013 for further evidence, the appellant was unable to attend owing to a sudden mechanical defect in his two-wheeler. After securing necessary repairs, he proceeded to the Court, but the proceedings had, in the meantime, been decided and the respondent was acquitted under Section 256 Cr.P.C. In the circumstances, where the appellant had demonstrated prior diligence and his absence was attributable to an unforeseen impediment, the Trial Court was expected to adopt a more accommodating approach. Passing an order of

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acquittal before the rise of the Court, and without affording the appellant an adequate opportunity to place the remaining evidence on record, resulted in denying him a fair chance to substantiate his case. Given that the matter had already progressed substantially, a decision on merits would have better served the ends of justice, than a dismissal founded solely on a brief and unintentional absence.

9. A solitary and unintentional absence, occasioned by a sudden mechanical failure of the appellant's vehicle, could not have been a sufficient basis for dismissing the complaint and acquitting the respondent under Section 256 Cr.P.C. Such a course of action, taken without waiting for the appellant to appear and without granting a reasonable opportunity to lead the remaining evidence, has the potential to defeat the proper adjudication of proceedings initiated under Section 138 of the Negotiable Instruments Act and may result in unavoidable injustice.

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10. Considering the circumstances reflected from the record, including the appellant's consistent participation in the proceedings and the fact that his absence on 04/05/2013 was due to an unexpected mechanical failure of his two-wheeler, it would have been appropriate for the Trial Court to extend a reasonable opportunity to enable the appellant to lead his remaining evidence. The requirement of affording a fair chance to both parties to prosecute and contest the matter is an essential facet of procedural fairness. The Trial Court, however, proceeded to dismiss the complaint and acquit the respondent on the basis of a single and unintended absence, and did so without keeping the matter pending for the remaining part of the Court day. Such a rigid and technical approach, in a case where evidence had already been filed and the proceedings had substantially advanced, undermines the objective of ensuring adjudication on merits. For the reasons stated above, I deem it appropriate to allow the appeal. Hence, the following order:-

Hence, the following order:-

ORDER

(i) The Appeal is **allowed**.

(ii) The impugned order passed by the learned 8th Joint Civil Judge Junior Division, Nagpur and Judicial Magistrate First Class, Special Court, Nagpur, in Summary Criminal Case No. 21508/2011, dated 04/05/2013 dismissing the said complaint in default under Section 256 of the Code of Criminal Procedure and consequently acquitting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, is quashed and set aside.

(iii) Summary Criminal Case No.21508/2011, 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.

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(iv) The parties are directed to remain present before the Learned Trial Court on 18/12/2025.

(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.2,000/-. 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]