



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.206 OF 2024

Shri. Harish S/o Premchand Kamble,
Aged 52 Years
Occupation-Service
R/o. Quarter No. 43,
A.G. Old Building, Civil Lines,
Nagpur, 440001

...APPLICANT

VERSUS

Vikram s/o Govindrao Dongre,
Aged 48 Years,
Occupation-Private,
R/o. Plot No. 102,
Mahalaxmi Nagar, Nagpur

...NON-APPLICANT

Mr. V.A. Dhaiwale, Advocate for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 16, 2025.

ORAL JUDGMENT :

Heard. Taken up for the final disposal with the consent of
the learned Counsel for the applicant.

2. None present for the non-applicant.

3. By this revision, the applicant has challenged the order passed by the District Judge-5 and Additional Sessions Judge, Nagpur dated 15/07/2022 dismissing the appeal which was filed against the conviction arising out of S.C.C. No.11047/2013. The District Judge-5 and Additional Sessions Judge, Nagpur dismissed the appeal for want of prosecution.

4. Brief facts which are necessary for the disposal of the appeal are as under:

A] The non-applicant who is the original complainant preferred the complaint under Section 138 of the Negotiable Instrument Act, 1881 on an allegation that the present applicant issued the cheque of Rs.25,000/- against the legal and enforceable debt. On depositing the said cheque, it was dishonoured for want sufficient funds, therefore, notice was issued on 30/03/2013. After receipt of the notice, as the applicant has not paid the amount, therefore, the complaint under Section 138 of the Negotiable Instrument Act came to be filed. After recording of the evidence, the applicant is convicted of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 against the said order and judgment of sentence, the applicant has preferred an appeal bearing No.19/2017 which was pending before the

District Judge-5 and Additional Sessions Judge, Nagpur. By passing order, District Judge-5 and Additional Sessions Judge, Nagpur by recording the reasons that the present appeal is filed challenging the judgement and order dated 27/10/2016 passed by the Judicial Magistrate First Class, Court No.26, Nagpur in SCC No. 11047/2013 wherein the appellant/original accused is convicted for the offence punishable under Section 138 of the N.I. Act and was sentenced to suffer Simple Imprisonment for three months and to pay fine of Rs.1,10,000/- in default to suffer Simple Imprisonment for two months.

5. It is further observed that the applicant/original accused repeatedly called, remained absent. His Counsel is also absent. The respondent/original complainant and his Counsel is present. It appears that, after filing of the appeal and after getting the sentence suspended the appellant did not attend the Court except on few occasions, however, since 2018 he has not attended the Court. Considering the negligence of the applicant, the Counsel Mr. Wandre also appeared to withdraw his Vakalatnama and filing Pursis at Exhibit 6. Hence, the order and dismissed the appeal for want of prosecution.

6. Learned Counsel for the applicant submitted that in view of the provisions of Criminal Manual, learned Counsel ought to have issued

notice to the present applicant. Present applicant has already engaged the Counsel of his choice, and therefore, he was under impression that the Counsel is looking into the matter. The presence of the applicant was not required before the appellate Court, and therefore, he has not attended the proceedings before the District Judge-5 and Additional Sessions Judge, Nagpur. He further submitted that it is observed in the order that the Counsel to whom he has engaged has withdrawn his Power. The Counsel remained present on 21/02/2019 thereafter for about a year Counsel didn't attend the matter which was fixed for taking appropriate steps and for hearing. There was a lock down due to the Covid-19 pandemic situation, and therefore, the applicant could not attend the proceedings and subsequently, he was under the impression that his Counsel is attending the proceeding but from perusal of the order it reveals that the Counsel has also not attended the proceeding and without notice he has withdrawn the Vakalatnama. He invited my attention towards the Chapter VI Clause No.4(b) which speaks about the Vakalatnama which is reproduced for reference:

“When a Pleader who has filed a Vakalatnama for a party wishes to withdraw his appearance, he shall serve a written notice of his intention to do so on his client at least seven days in advance of the case coming up for hearing before the Court. Leave of the Court to withdraw appearance may also be applied for if the client has instructed the Pleader to that effect. The Pleader shall file a note in writing

requesting the Court for permission to withdraw appearance and shall also file along with the Note letter of the client instructing him to withdraw his appearance or a copy of the intimation given to the client as above together with his written acknowledgement by the client. The Court if it is satisfied that no inconvenience is likely to be caused to the Court or the client may permit the Pleader to withdraw his appearance and while permitting the Pleader to do so may also impose such terms and conditions as it may deem proper either in public interest or in the interest of the parties.”

7. Thus, in view of the above provisions, it was the Counsel who has to serve the notice before withdrawing his appearance at least of a 7 days. These compliance appears to be absent in the present matter.

8. Learned District Judge-5 and Additional Sessions Judge, Nagpur has not considered this suspect and without giving an opportunity to the present applicant, dismissed the appeal. In view of that, the order passed by the District Judge-5 and Additional Sessions Judge, Nagpur deserves to be quashed and set aside. Accordingly, I proceed to pass the following order :

(i) The order passed by the District Judge-5 and Additional Sessions Judge, Nagpur is hereby quashed and set aside.

- (ii) The appeal shall be restored at its original stage.
- (iii) The parties be intimated by issuing the notice.
- (iv) The record and proceedings be sent back to the trial Court along with the copy of this order.

9. The criminal revision application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*