



Judgment

Cr.APPEAL-29-2025

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

CRIMINAL APPEAL NO. 29 OF 2025

...

Sanjay s/o Asaram Mendhe,
Aged about 32 year,
Occupation - Private Service and Agriculturist,
R/o. Kokna / Jami, Tah. Sadak Arjuni,
District - Gondia.

... **APPELLANT**

- - V E R S U S - -

Ghanshyambhai s/o Gordhanbhai Patel,
Aged about 60 years,
Occupation - Business / Retired Service,
R/o. 416, Rupa Tekari, Koyli,
Tah. and District Vadodara - 391 330,
(Gujarat State).

... **RESPONDENT**

Mr. N.R. Tekade, Advocate for the Appellant.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 16, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant.

2. Admit.

3. The present appeal is filed for quashing and setting aside the order dated 10/11/2023 passed below Exh.-1 by the learned Judicial Magistrate First Class, Sadak Arjuni, in Summary Criminal Case No. 68/2018, whereby the learned Magistrate dismissed the complaint for want of prosecution, resulting in the acquittal of the accused.

4. Brief facts of the case are that:

The appellant alleged that the respondent, having knowledge of the appellant's financial condition, demanded Rs. 5,00,000/- for business purposes, assuring repayment within six months. The appellant states that he paid Rs. 3,24,000/- in cash

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and Rs. 1,76,000/- via bank transfer. Upon expiry of the stipulated period, when the respondent failed to repay the amount, the appellant requested refund, resulting in issuance of two cheques, one for Rs.4,50,000/- (Cheque No. 000018 of Bank of Baroda) and another one for Rs.50,000/- (Cheque No. 649396 of Dena Bank). Both cheques were dishonored due to insufficient funds. Thereafter, the appellant sent a legal notice demanding the repayment. In absence of any response, the appellant filed a complaint on 12/04/2018. The appellant's evidence was submitted on 20/07/2019, and after verification of the affidavit on 13/01/2023, the matter was fixed for cross-examination. On 11/09/2023, the Trial Court allowed the respondent's personal exemption request, subject to costs. The appellant on 16/10/2023 sought an adjournment due to his wife's hospitalization, which was granted on 16/10/2023, subject to the payment of Rs. 300/- as costs to the respondent.

5. Subsequently, on 21/10/2023, the appellant's

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counsel informed the court that, the appellant was suffering from typhoid, and so another adjournment was granted, subject to payment of Rs.1000/- as costs. However, on 09/11/2023, neither the appellant nor his counsel appeared, and a final opportunity was granted to be present on 10/11/2023. The appellant failed to appear on 10/11/2023, and consequently, the complaint was dismissed by the learned Judicial Magistrate First Class, Sadak Arjuni, who passed the following order:

“ 1] The complaint is dismissed under section 256 of Cr. P. C.

2] Accused is acquitted for the offence punishable under section 138 of the Negotiable Instrument Act.

3] His bail bond if any stands cancelled.”

6. The dismissal of the complaint by the learned Judicial Magistrate First Class is challenged on the ground that although repeated opportunities had been granted, the absence of the complainant on the last two dates was due to genuine medical reasons, including illness of the complainant and his wife. It is

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submitted by the counsel for appellant that the complainant had already filed his evidence by way of an affidavit, and the matter was pending for cross-examination. On 21/10/2023, the Court granted a final opportunity subject to payment of costs, and while the complainant's counsel submitted that the complainant was suffering from typhoid, no supporting medical documents or receipt of cost payment were placed on record. The absence continued on 09/11/2023, resulting in the dismissal of the complaint and consequential acquittal of the accused. While the trial court showed indulgence and repeatedly directed both the parties to proceed expeditiously, the matter was not adjudicated on merits. The dismissal at this stage, when only cross-examination was pending, may deny substantive justice to the complainant.

7. The learned counsel for the appellant relied upon this Court's judgment in *Shri Shaikh Akbar Talab VS Shri A.G. Pushpakaran & Another, 2018 ALL MR (Cri) 1208*, particularly

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the observations in Paragraph 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 the light of the legal principles laid down in *Shaikh Akbar Talab* (supra), this Court holds that the learned Trial Court ought not to have dismissed the complaint for want of prosecution nor acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act.

9. It is evident from the record that the appellant had consistently participated in the proceedings and filed an

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evidence by affidavit. The matter was at the stage of cross-examination, when the absence of the complainant and his counsel was noted on the last two occasions. On 21/10/2023, though the complainant was absent, his counsel informed the Court that the complainant was suffering from typhoid and would file a medical certificate. However, no such certificate or application was filed, and the directed costs were also not paid by the complainant. Further the absence of the complainant continued on 09/11/2023, where neither the complainant nor his counsel appeared, leading to the dismissal of the complaint on 10/11/2023. Given the matter's pendency of over five years and advanced stage, the learned Judicial Magistrate First Class should have exercised judicial discretion liberally. Dismissing the complaint at this stage, especially when the evidence was already filed and only cross-examination was awaited, results in denial of substantive justice. A pragmatic and fair approach should have been adopted, ensuring the matter be decided on merits rather than on a strict, technical basis.

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10. Absence on one or a few occasions, by itself, does not justify dismissal for non-prosecution and consequent acquittal. Such an approach would lead to miscarriage of justice and frustrate the objectives of Section 138 of the Negotiable Instruments Act.

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

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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**.

(ii) The impugned order passed by the learned Judicial Magistrate First Class, Sadak Arjuni, in Summary Criminal Case No.68/2018, dated 10/11/2024, 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.

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(iii) Summary Criminal Case No.68/2018, 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 24/11/2025.

(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.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**]