



Judgment

54-CR.APPEAL-2237-2023

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

CRIMINAL APPLICATION [APPA] NO.322 OF 2023

IN

CRIMINAL APPEAL [STAMP] NO. 2237 OF 2023

...

Amit Sunarlal Shahu,
Aged about 35 years, Occupation - Service,
R/o. Deorao Baba Chawl, Rajputpura,
Akola, Tah. and District - Akola.

... **APPELLANT**

- - V E R S U S - -

Hare Madhav Electronics,
Through its Proprietor,
Vijay Motilal Pinjwani,
Aged major, Occupation Business,
R/o. C/o. Near Rayat Haveli, Gajanan Market,
Shop No.5, Tilak Road, Akola,
Tah. and District - Akola.

... **RESPONDENT**

Mr. U.V. Chakravarty, Advocate h/f. Mr. A.M. Tirukh, Advocate
for the Appellant.

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CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 09, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant.

2. Admit.

3. The present application is being filed seeking leave to file appeal against the order dated 07/01/2023 passed below Exh.1 by the learned Additional Chief Judicial Magistrate, Court No.5, Akola, in Summary Case No.1989/2019. The appellant further prays for quashing and setting aside of the said order, wherein, the learned Magistrate was pleased to dismiss the complaint for want of prosecution, resulting into acquittal of the accused.

4. Brief facts of the case are that the appellant / complainant and the respondent / accused are well acquainted with each other and have cordial relations. On 07/12/2018,

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respondent / accused approached the appellant and demanded Rs.2,50,000/- for business purpose. The appellant gave Rs.2,50,000/- to the respondent as a hand loan on his assurance that he would repay the same to the appellant within a period of one month. Thereafter, the respondent / accused towards discharge of his legal liabilities, issued a cheque of Rs.2,50,000/- to the appellant. Upon presentation of the cheque, it was dishonoured and accordingly the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, against the respondent, which was registered as Summary Criminal Case No.1989/2019 on 03/04/2019. After registration of the Summary Criminal Case, it seems that the case was adjourned from time to time. On 05/01/2023, the Additional Chief Judicial Magistrate, Court No.5, Akola, passed the following order :-

“ The Complainant and his counsel repeatedly called, but no one present through complainant side till 4.00 p.m. The matter is pending for evidence of complainant. In absence of complainant matter could not proceed further.

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Thus, complainant is directed to appear and lead evidence on next date otherwise the matter will be disposed of for want of prosecution.”

Subsequently on 07/01/2025, the learned Additional Chief Judicial Magistrate, Court No.5, Akola, passed the following impugned order:-

“ On perusal of proceeding, it appears that same is instituted in the year 2019. Since long, it was pending for evidence, but complainant failed to lead evidence. Thus, on 05.01.2023 order passed below Exh. 1 and matter posted for dismissal order. Even today, whenever called the complainant is not appeared before the Court and not taken any steps. Record shows that the complainant is not interested to proceed with the matter. Hence, the matter is dismissed for want of prosecution. Accused is acquitted.”

5. The learned counsel for the appellant submits that the order dated 07/01/2023 ought not to have been passed by the learned Magistrate, as the appellant was regularly prosecuting and attending the Court. However, the matter was referred to the Lok Adalat to explore the possibilities of

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settlement between the parties. He further submits that since no settlement was arrived between the parties, the case was fixed for filing of the affidavit of evidence of the complainant on 21/07/2022. However, only on two occasions, the affidavit of complainant could not be filed. On 23/11/2022 and 13/12/2022, though the appellant and his counsel were present in the Court, but the Presiding Officer was on leave on both dates. He further submits that on 13/12/2022, a request was made to the concerned clerk of the Court to fix the matter on 13/01/2023, however, inadvertently, the clerk listed the matter on 05/01/2023. The learned counsel appearing in the matter remained under the impression that the next date was 13/01/2023, and therefore, on 05/01/2023 and 07/01/2023, inadvertently, the complainant and the counsel remained absent. It is neither intentional nor deliberate act, and therefore, prayed to quash and set aside the order dated 07/01/2023.

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6. The learned counsel for the appellant relied on the judgment 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:

“ In all these cases 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. The respondent/non-applicant though served has not appeared. This Court, by order dated 15/03/2023, was pleased to issue notice to the respondent, and it was made returnable on 23/03/2023. The record indicates that the sole respondent is served, however, none appears on behalf of the

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respondent/non-applicant. Again on 31/10/2023, this Court adjourned the matter to 28/11/2023, observing that “(2). *Non-applicant is served though not appeared. (3). In order to give one chance to appear before this Court to the non-applicant, stand over to 28.11.2023.*”. Thereafter, the matter was again adjourned on 28/11/2023 and also on 15/02/2024. However, the non-applicant/respondent has chosen not to appear in the present proceedings. Therefore, considering that the present proceeding pertains to the year 2023, I have decided to proceed further.

8. I have perused the order passed below Exh.1, wherein, the learned Court below was pleased to dismiss the 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* placed on record from Page Nos.19 to 23 of the application. It seems from the *roznama* that on

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several occasions, the appellant as well as his counsel were present and also on few occasions they were absent. It is also noticed that on two or three occasions, the Court was not available. On 22/04/2022, the *roznama* reflects that the counsel for the appellant was present and the matter was referred to the Lok Adalat. On 21/07/2022, the present appellant was present, the counsel for the appellant was also present, however, the Presenting Officer was on leave. On 11/08/2022, the counsel as well as the complainant was absent and the matter was adjourned to 21/09/2022. On 21/09/2022, the appellant was absent, however, the counsel was present. On 14/10/2022, the counsel for appellant was present, however, appellant was absent, and the next date was fixed as 23/11/2022. Again, on 23/11/2022, the Presiding Officer was on leave, so also on 13/12/2022, however, the next date was fixed as 05/01/2023. On 05/01/2023, the appellant as well as his counsel were absent. The case was again fixed on 07/01/2023, and on the said date, both remained absent and

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the impugned order was passed. The learned counsel has explained the reasons for their absence, stating that the counsel for the appellant was under the impression that the matter would be fixed on 13/01/2023, as he had informed the court clerk to fix the date accordingly, as the Presiding Officer was not available on 13/12/2022.

9. Considering the fact that the complaint was dismissed for non-prosecution and the accused was acquitted under Section 256 of the Code of Criminal Procedure, in my opinion, the appellant has given sufficient explanation so as to warrant interference in the order dated 07/01/2023. It is to be noted from the *roznama* that the matter was referred to the Lok Adalat, however, on certain occasions, the complainant was absent, on certain occasions, the complainant was present, and on certain occasions, the Presiding Officer was on leave. The Court ought to have adopted a liberal approach, as the appellant and his counsel diligently and sincerely attended the

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Court on multiple occasions. Merely on few occasions, if both are absent, that by itself would not be sufficient to pass the order of dismissal for non-prosecution and thereby acquittal of the accused. 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. Therefore, I am inclined to grant leave to prefer the appeal.

10. 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 appellant and his counsel were absent on last two occasions, which are noted above. However, considering the reasons mentioned by the appellant for his absence, that he was under impression that the Court clerk would give him the date for which he had requested, in my opinion, is a sufficient explanation to interfere in the order of dismissal for non-prosecution. The observations of this Court

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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 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 appeal. Hence, the following order:-

ORDER

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

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(ii) The impugned order passed by the Learned Additional Chief Judicial Magistrate, Court No.5, Akola, in Summary Case No.1989/2019, dated 07/01/2023, 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. 1989/2019, 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 22/09/2025.

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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 cost 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**]