

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

CRIMINAL APPLICATION (APPA) 782/2025 IN
CRIMINAL APPEAL (ST) NO. 3658/2024

(Suresh S/o Namdeo Lanjewar Vs. Jagruti Agro Foods & Infra Projects,LLP)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Aashish Rajesh Fule, Advocate for applicant/appellant.
None for respondent.

CORAM: M. M. NERLIKAR, J.

DATED : 03/12/2025.

Heard the learned counsel for the applicant,
though, duly served, none appears for the respondent.
The application is filed seeking leave to file appeal. Leave
granted. Application is disposed of.

2. The appeal is filed against the order below Exh.1
passed by the learned Judicial Magistrate First Class, Court
No.3, Bhandara in SCC No.731/2016 dated 05.12.2023,
wherein the complaint filed by the appellant under
Section138 Negotiable Instruments Act ('NI Act') was
dismissed for want of prosecution and the accused is
acquitted.

3. The learned counsel for the appellant submits that
the Trial Court ought to have given him an opportunity to

prosecute his complaint as he was regularly attending the Court on each and every date. However, the matter kept adjourning for some or other reasons. It is true that the complaint was filed in the year 2016, however much time went to serve the accused/respondent. The Court was constrained to issue bailable as well as non-bailable warrant time and again to secure the presence of respondent. The Roznama shows that the applicant was present on each and every date except on few dates. Even in the year 2020 and 2021, during Covid period, he has attended the Court. He submits that he wants to pursue his complaint, if one opportunity is granted to him and even if this Court directs the Trial Court to decide the complaint expeditiously. He invited attention of this Court to the Roznama which shows that since 26.08.2021, the appellant and his counsel were continuously attending the proceedings, however the respondent was never present. Even during this period only on three to four occasions, he was not able to remain present. However, he lastly submits that one opportunity may be granted as the cheque is of huge amount.

4. As observed above, though the respondent is duly served, none appears on behalf of him. I have perused the impugned orders and the Roznama. Admittedly, the case is of 2016. The case is kept for adducing the evidence of complainant. It further appears that after granting several opportunities to adduce the evidence on behalf the complainant, the Court was constrained to keep the matter on 22.11.2023, wherein the next date was given as 05.12.2023 and on 22.11.2023, specific order was passed, “keep the matter for dismissal”. However, on 22.11.2023 and also on 05.12.2023 neither the appellant remained present nor his counsel was present. Therefore, the Court was constrained to dismiss the complaint under Section 256 of the Code of Criminal Procedure and the accused was acquitted by its order dated 05.12.2023.

5. No doubt, the appellant remained absent on 23.10.2023, 22.11.2023 and 05.12.2023, however he remained present on 16.08.2023 and 11.09.2023. It appears from the record that though the case was instituted in the year 2016, the appellant was not able to serve the respondent for a long time and after service, it further appears that the respondent/accused has not

appeared before the Court, therefore, the Court was constrained to passailable as well as non-bailable warrant against the respondent. It appears that on several occasions, the accused/respondent and his counsel were not present, however it appears from Roznama that in maximum number of time when the date was given, the counsel as well as complainant was present, therefore it could be gathered that the appellant is bonafidely pursuing the complaint. The fact remains that the appellant could not adduce his evidence either by filing the affidavit of examination-in-chief or by oral evidence. It is assured by the learned counsel for appellant that if the impugned order is quashed and set aside, the appellant would readily file the affidavit of examination-in-chief or lead the oral evidence.

6. 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 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.”

7. 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 and acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act.

8. 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 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:-

- (I) The order below Exh.1 passed by the learned Judicial Magistrate First Class, Court No.3, Bhandara in SCC No.731/2016 dated 05.12.2023 is hereby quashed and set aside.
- (II) The complaint is restored to its original position. The complainant/appellant is directed to adduce the evidence on 19.01.2026.
- (III) The Trial Court shall proceed further as per law.
- (IV) 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.

(V) The above order is subject to cost of Rs.25,000/- and this cost to be paid to the respondent within a period of four weeks from the date of uploading of this order.

9. The appeal is disposed of in above terms.

(M. M. NERLIKAR, J.)

Gohane