



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

CRIMINAL APPLICATION [APPA] NO. 564 OF 2024
IN
CRIMINAL APPEAL [STAMP] NO. 4829 OF 2024

...

M/s Gati Kintetsu Express Pvt.Ltd.(Gati K.W.E),
Having its registered office at Plot No.20,
Survey No.12, Kothaguda, Hyderabad - 500 084.
Branch Office at Survey No. 86,
Mouza: Surabardy, Near Highland Park,
Wadhamna, Amravati Road, Nagpur - 440 023.

... **APPELLANT**

- - V E R S U S - -

Anjali Sonal Sirsat,
Age-Major, Occup.- Business,
R/o - Ramjag Jivan Nagra, Dubewadi,
Near Gajanan Maharaj Temple,
Kharap Road, Akola 444 001.

... **RESPONDENT**

Mr. V.R. Gajbhiye with Mr. U.K. Bisen, Advocate for the
Appellant.

Mr. Vinod G. Lohia, Advocate for the respondent.

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CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 16, 2025.

ORAL JUDGMENT :

Heard the learned counsel for both the parties.

2. Upon hearing the learned counsel for the appellant, leave is granted to prefer the appeal. Office is directed to register the appeal.

CRIMINAL APPEAL NO. _____ 2025:

3. **Admit.** The appeal is taken up for final hearing.

4. The present application is being filed seeking leave to file an appeal against the order dated 27/02/2024 passed below Exh.1 by the learned 13th Joint Civil Judge, Senior Division & Additional Chief Judicial Magistrate, (Special Court-138 N.I. Act), Nagpur, in Summary Criminal Case No.9135/2019. The appellant further prays for quashing and setting aside of the said order, wherein, the learned Magistrate

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was pleased to dismiss the complaint for want of prosecution, resulting into acquittal of the accused.

5. Brief facts of the case are that:

The appellant is a company incorporated under the Companies Act, 1956. The company is engaged in the business of Express Distribution and Supply Chain Management. The respondent was appointed as an Associate of Gati KWE and was responsible for picking up and delivering consignments in a specified area. As part of her responsibilities, the respondent was required to maintain proper accounts of consignments booked and delivered and to deposit the freight charges collected from customers, particularly under Freight on Delivery (FOD) and Cash on Delivery (COD) arrangements, with the appellant on a regular basis. It is the case of the appellant that the respondent, while acting in the said capacity, collected freight and booking amounts from customers but failed to remit the same to the appellant. Following repeated demands, the

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respondent issued a cheque bearing No. 184397 dated 23/12/2018, drawn on State Bank of India, Akola Branch, for an amount of Rs.1,45,054/-, allegedly towards the outstanding dues. The said cheque was presented by the appellant through its banker, HDFC Bank, Nagpur, on 16/01/2019. However, the cheque was returned unpaid by the respondent's bank with the endorsement "Refer to Drawer" as per the return memo dated 19/01/2019. Thereafter, the appellant issued a statutory legal notice dated 02/02/2019 through counsel, calling upon the respondent to make payment of the cheque amount within fifteen days of receipt. The said notice was served on the respondent on 04/02/2019. The respondent, through her counsel, replied to the notice on 06/02/2019, but did not make the payment as demanded. In view of the alleged non-compliance, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, on 13/03/2019 before the Trial Court.

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6. The appellant, in support of the complaint, relied on documentary evidence including the cheque in question, cheque return memo, copy of the legal notice, postal receipts, acknowledgment, reply notice, and affidavit of evidence. The respondent did not lead any oral or documentary evidence in the proceedings. The Trial Court, vide order dated 27/02/2024, dismissed the complaint for want of prosecution and acquitted the respondent. The present appeal has been filed by the appellant challenging the said order.

7. The record indicates that the complaint was dismissed by the learned Trial Court on 27/02/2024 for want of prosecution under Section 256 of the Code of Criminal Procedure, 1973. The matter was fixed for recording of evidence, and when called, none appeared on behalf of the complainant, whereas the accused and her counsel were present. The Trial Court, referring to the earlier order passed below Exh.-1 on 29/01/2024 granting a last opportunity to the

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complainant to adduce evidence, recorded that no steps had been taken till that date. It was observed that the case was of the year 2019, and in the absence of any application seeking adjournment, it appeared that the complainant had lost interest in the matter. The order further records that the matter was listed under a special drive, and in view of the complainant's absence and the previous directions, no reason existed to adjourn the case further. Accordingly, the complaint was dismissed under Section 256 CrPC, the accused was acquitted of the offence under Section 138 of the Negotiable Instruments Act, the bail bond stood cancelled, and the cash security, if any, was directed to be refunded. The proceedings were ordered to be closed.

8. On a plain reading of the order dated 27/02/2024, it is evident that the dismissal of the complaint was primarily on account of the complainant's absence on a single date and the non-compliance with a direction to lead evidence. The record,

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however, does not indicate any pattern of continued default, delay, or lack of diligence on the part of the complainant. The matter had already reached the stage of evidence, and earlier steps taken by the complainant in furtherance of the proceedings are evident from the record. The learned Trial Court appears to have proceeded on the assumption that the complainant had lost interest in the matter, without examining the overall conduct of the complainant or the nature of the lapse in the proper context. No finding has been recorded indicating that the absence was wilful or that there was any attempt to delay the proceedings. In such circumstances, the decision to dismiss the complaint at that stage, without affording a fair opportunity to lead evidence, does not appear to be in conformity with the settled principles of natural justice and procedural fairness. The approach adopted by the Trial Court, in this context, cannot be said to be legally sustainable.

9. 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.”

10. Upon perusal of the record and in light of the law laid down by this Court in the case of *Shri Shaikh Akbar Talab* (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.

11. It is apparent from the record that the complaint had progressed till the stage of evidence, and the complainant had already submitted an affidavit in lieu of examination-in-chief. The proceedings reflect that steps had been taken by the complainant to prosecute the matter, and there is no indication of prolonged inaction or indifference. The order dated 27/02/2024, passed under Section 256 of the Code of Criminal Procedure, 1973, appears to have been based solely on the absence of the complainant and his counsel on that particular date. However, the record does not suggest that the complainant had habitually remained absent or that there had been repeated non-compliance with the Court directions. The dismissal was ordered without noting any prior conduct amounting to abandonment of the complaint or misuse of process. In such a context, where the matter had already advanced significantly, the Trial Court was expected to assess

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the overall conduct of the complainant and the nature of the default before resorting to dismissal. The absence of such consideration reflects an approach that may not align with the requirements of procedural fairness and judicial discretion, particularly in matters involving penal consequences.

12. The absence of the complainant on a single date, particularly when the matter had reached the stage of evidence and prior steps had been duly taken to prosecute the complaint, cannot be treated as sufficient ground to dismiss the proceedings for want of prosecution. The record does not reflect any pattern of neglect or repeated default, and there is no material to suggest that the complainant had lost interest in the matter. Proceeding to dismiss the complaint and acquit the accused in such circumstances, without appreciating the overall conduct of the complainant or affording a fair opportunity to complete the evidence, undermines the object and purpose of the proceedings initiated under Section 138 of the Negotiable

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Instruments Act. An unduly technical or rigid approach at this stage, in the face of substantial compliance, risks defeating the ends of justice.

13. 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 was 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

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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:-

O R D E R

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

(ii) The impugned order passed by the learned 13th Joint Civil Judge, Senior Division & Additional Chief Judicial Magistrate, (Special Court-138 N.I. Act), Nagpur, in Summary Criminal Case No.9135/2019, dated 27/02/2024, 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.9135/2019, 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 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.15,000/-. The cost shall be deposited by the appellant in the Trial Court. The said cost shall be paid to the respondent.

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(vii) The appeal is disposed of, accordingly.

[**M. M. NERLIKAR, J**]