



Judgment

Cr.APPA-565-2024

1

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

CRIMINAL APPLICATION [APPA] NO. 565 OF 2024

IN

CRIMINAL APPEAL [STAMP] NO. 4839 OF 2024

...

M/s Shree Shyam Motors,
Through its proprietor,
Shri Pravin S/o Nandlaji Lohiya,
Aged about 45 Years, Occ.: Business,
R/o Near Madhuban Hotel, Nalwadi,
Nagpur Road, Wardha, Tah. & Dist. Wardha.

... **APPELLANT**

- - V E R S U S - -

1] Shri Kishor S/o Sahebrao Ghormade,
Aged adult, Occ.: Business,
R/o Chandewahi, Tah. Karanja (Gh.),
Dist. Wardha.

2] State of Maharashtra,
Through the office of learned Public Prosecutor,
Hon'ble High Court at Nagpur,
Nagpur, Tah. & Dist. Nagpur.

... **RESPONDENTS**

Mr. A.H. Lohiya, Advocate for the Appellant.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 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 01/04/2024 passed below Exh.1 by the learned Additional Chief Judicial Magistrate, (Court No.3), Wardha, in Summary Criminal Case No.4784/2019. 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:

3

The appellant, a resident of Wardha district, is engaged in the business of selling Eicher Tractors and related agricultural equipments under the name M/s Shree Shyam Motors. The respondent, also a resident of Wardha district, entered into a business transaction with the appellant in January 2018. The respondent purchased an Eicher Tractor for Rs. 6,40,000/-, paying Rs. 3,50,000/- upfront and financing Rs. 2,45,700/- through Hinduja Finance. The balance of Rs. 40,300/- was agreed to be paid by August 2019, but the respondent failed to pay the same. On 19/08/2019, the respondent issued a cheque for Rs. 40,000/- to settle the balance, which was dishonoured due to insufficient funds on 22/08/2019. Despite reminders, the respondent did not make the payment. On 03/09/2019, the appellant sent a legal notice demanding payment within 15 days, but the respondent failed to comply. As a result, the appellant filed a complaint on 01/10/2019 under Section 138 of the Negotiable Instruments Act, 1881, for dishonour of the cheque. The Trial Court issued

4

process against the respondent. However, on 05/03/2024, the case was transferred to another court, and due to an inadvertent error, the appellant's counsel failed to attend the hearing on 01/04/2024. Consequently, the Trial Court dismissed the complaint for want of prosecution. On 01/04/2024, the Additional Chief Judicial Magistrate, (Court No.3), Wardha, passed the following order :-

“ 1. Case is dismissed for want of prosecution.”

5. The dismissal of the complaint by the Trial Court is challenged on the ground that failure to attend the hearing was due to a *bonafide* mistake, and the appellant and his counsel apologize unconditionally for the said oversight. The appellant contends that the dismissal does not reflect any intentional neglect or delay in prosecuting the matter and that the matter should be allowed to be proceeded on merits. The learned counsel for the appellant also invited my attention to the *roznama* dated 05/03/2024, which specifically indicates that

5

the *roznama* was not maintained for several dates due to transfer of the matter from the Court of the 3rd Joint Civil Judge, Junior Division, Wardha, to the Court of the 3rd Joint Senior Division and Additional Chief Judicial Magistrate, Wardha, pursuant to the order dated 01/01/2024 passed by the District and Sessions Judge, Wardha. It further appears from the *roznama* that, although the counsel for the appellant was present on that day, the appellant was absent. On that occasion, the counsel for the appellant orally requested for an adjournment for verification of the complaint, and the matter was accordingly adjourned to 01/04/2024. On 01/04/2024, the counsel for the appellant was present, but the appellant was absent, even the accused remained absent. Consequently, the learned Trial Court passed an order dismissing the complaint for want of prosecution. Upon review of the record, it is evident that Summary Criminal Case No. 4784/2019 has been pending for a considerable period. It is concerning to see that the *roznama* dated 05/03/2024 reflects that the *roznama* was not

6

maintained in a timely manner. In such circumstances where the *roznama* itself was not accurately or promptly recorded, it was incumbent upon the Court to ascertain whether the appellant and his counsel had been present at previous hearings. Without verifying these crucial facts, the Court ought not to have dismissed the complaint for want of prosecution. Furthermore, given the transfer of the case from one Court to another, it was essential for the Court to seek an explanation from the concerned clerk regarding the failure to maintain the *roznama*. This failure raises questions about the accuracy and integrity of the procedural record, which directly impacted the decision to dismiss the complaint.

6. Leave is granted to the appellant to prefer the appeal.
7. **Admit.** Office to register the appeal. The matter is taken up for final hearing.

8. 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.”

9. 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

8

offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

10. It is evident from the record that the appellant had consistently attended the proceedings, and the case was regularly listed and adjourned. However, the *roznama* which is crucial for maintaining an accurate record of attendance, was not properly maintained by the Court, as highlighted in the *roznama* dated 05/03/2024. Despite this, the appellant and his counsel had diligently appeared at earlier hearings, and there was no intentional neglect on their part. On 01/04/2024, the counsel for the appellant was present, but the appellant was absent, even the accused remained absent. In such circumstances, the learned Additional Chief Judicial Magistrate, Court No. 3, Wardha, should have adopted a more liberal approach, especially in light of the procedural discrepancies and the absence of a complete *roznama*. The Trial Court should have made reasonable efforts to verify the appellant's prior

9

attendance and the status of the proceedings before passing any orders. Given the appellant's consistent participation in earlier hearings, a reasonable opportunity to be heard should have been granted.

11. The absence on a solitary occasion, or even on few occasions, by itself, would not constitute sufficient ground to dismiss the complaint for non-prosecution and consequently acquit the accused. Such a view, if sustained, would result in miscarriage of justice and defeat the object of Section 138 of the Negotiable Instruments Act.

12. 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

10

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:-

ORDER

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

(ii) The impugned order passed by the learned Additional Chief Judicial Magistrate, (Court No.3), Wardha, in Summary Criminal Case

11

No.4784/2019, dated 01/04/2024, 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.

(iii) Summary Criminal Case No.4784/2019, 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

12

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**]