



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

CRIMINAL APPEAL NO. 454 OF 2019

...

Shri Narhari Nagari Sahakari PataSanstha,
Amravati, Registration No. 108,
Office at Jagdamba Tower, Amba Gade,
Amravati, through its Chief Executive Officer.

... **APPELLANT**

- - V E R S U S - -

Shri Ravindra Motiram Pache,
Aged about 38 years, Occ.:Agriculture,
R/o 23-A, Harishanti Colony,
Opposite to Gunwantrao Pande house,
Akoli road, Amravati, Tq. & Distt. Amravati,
Police Station Rajapeth, Amravati.

... **RESPONDENT**

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

None for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 25, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant. Though the respondent is served, none appeared on his behalf.

2. Admit.

3. The present appeal is filed for quashing and setting aside the order dated 05/06/2018, passed below Exh.1 & Exh.31 by the learned Judicial Magistrate First Class, Court No.5, Amravati, in Summary Criminal Case No. 3445/2016, 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, a Credit Co-operative Society duly registered under the Maharashtra Co-operative Societies Act, engaged in providing loans and financial assistance, has filed a

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complaint under Section 138 of the Negotiable Instruments Act against the respondent-accused. It is averred that on 24/05/2010, the respondent-accused, along with his father, obtained a loan of Rs.50,000/- for business purposes, to be repaid in monthly installments of Rs.2,100/- over 24 months. The respondent-accused allegedly defaulted in repayment. To settle the outstanding liability, the respondent-accused issued a cheque bearing No.0449342 dated 03/02/2016 for Rs.82,956/-, which was dishonored by Bank of Maharashtra, Balaji Market, Amravati, due to 'insufficient funds'. The appellant issued a statutory notice dated 24/06/2016, which remained uncomplied, leading to the present complaint under Section 138 of the Negotiable Instruments Act. Upon opening of the Court after summer vacation, the appellant's counsel noticed the impugned order dated 05/06/2018, whereby the complaint was dismissed and the respondent-accused acquitted on the ground of the appellant's absence. On 05/06/2018, the learned Judicial Magistrate First Class, Court No.5, Amravati, in

Summary Criminal Case No. 3445/2016, passed the following order:

“ The complainant absent when repeatedly called up till 4.00 p.m. The evidence of the complainant was discarded on 22/05/2018, as he consistently remained absent. As the complainant was repeatedly remaining absent, the accused has filed the application for dismissing the complaint. As the complainant is absent since long, whereas the accused is remaining present, the proceedings are stopped and accused stands acquitted for the offence punishable under section 138 of the N.I. Act vide section 256 of Cr.P.C..”

5. The learned counsel for the appellant submits that the Trial Court erred in dismissing the complaint under Section 138 of the Negotiable Instruments Act on technical grounds, without considering the appellant's *bona fide* and diligent efforts to pursue the matter. After the case was listed before the Lok Adalat on 22/04/2018 and no settlement was achieved, the appellant was under the genuine impression, based on information from Court staff, that the matter would be listed in

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the subsequent Lok Adalat. On the impugned date, the counsel for the appellant remained absent due to being pre-occupied, and the complaint was dismissed in default. The appellant, being the Chief Executive Officer, had actively monitored the proceedings and had attempted settlement, reflecting consistent diligence. It is further submitted that the Trial Court erred in dismissing the complaint solely on the ground of appellant's absence, without considering that the respondent-accused continues to default in repayment, and that the appellant, as a registered co-operative society disbursing public funds, is effectively performing banking functions. The respondent remains liable for a substantial sum, and the impugned order caused undue prejudice to the appellant. In these circumstances, it is prayed that the impugned order be quashed and set aside, and the appellant be granted a fair opportunity to prosecute the complaint on merits.

6. The learned counsel for the appellant relied on the

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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.”

7. 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.

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8. The record reflects that the appellant had been diligently prosecuting the complaint under Section 138 of the Negotiable Instruments Act and had actively followed up to ensure the case proceeded. After the matter was listed before the Lok Adalat on 22/04/2018 and no settlement was achieved, the appellant, relying on information from Court staff, was under the *bona fide* impression that the matter would be listed in the next Lok Adalat. On the date of the impugned order, the counsel for the appellant remained absent due to being pre-occupied, and the complaint was dismissed in default. The appellant, being the Chief Executive Officer of the Society, had consistently monitored the proceedings and even attempted settlement before the Lok Adalat. The dismissal by the Trial Court on such technical grounds, without considering these efforts and diligence, appears arbitrary and deprived the appellant of a fair opportunity to have the complaint adjudicated on merits.

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9. Solitary absence of the counsel for the appellant on the date of the impugned order, could not justify the dismissal of the complaint and acquittal of the respondent-accused. The appellant had been diligently pursuing the matter, actively monitoring the proceedings, and attempting settlement before the Lok Adalat. The immediate filing of the appeal after obtaining the certified copy, and the subsequent service of notice on the respondent during the pendency of this appeal, demonstrate that the appellant was acting in good faith and not negligent. By dismissing the complaint solely on the ground of the absence of counsel, without considering these efforts, the Trial Court deprived the appellant of a fair opportunity to have the complaint adjudicated on merits, causing undue prejudice.

10. Considering the circumstances on record, including the appellant's consistent and *bona fide* efforts to prosecute the complaint and pursue settlement before the Lok Adalat, it would be just and proper to afford the appellant a reasonable

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opportunity to have the matter adjudicated on merits. The dismissal of the complaint by the Trial Court solely on the ground of the absence of the counsel, without considering the appellant's diligent monitoring of proceedings and without granting an opportunity to continue the prosecution, reflects an unduly technical and rigid approach, inconsistent with the principles of natural justice. The observations of this Court in ***Shri Shaikh Akbar Talab (supra)*** are relevant, wherein it was held that the principles of natural justice require giving the complainant a fair opportunity to prosecute the complaint on merits, and similarly, an opportunity must be afforded to the accused to contest the allegations. The principles of natural justice are fundamental to the judicial process, and the right to be heard and to present one's case are statutory incorporations of these principles. The Trial Court, by dismissing the complaint for want of prosecution without due consideration of the appellant's *bona fide* efforts, failed to uphold these principles. 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, Court No.5, Amravati, in Summary Criminal Case No.3445/2016, dated 05/06/2018 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.3445/2016, 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.

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(iv) The parties are directed to remain present before the Learned Trial Court on 18/12/2025.

(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.1,000/-. 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**]