



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

CRIMINAL APPEAL NO. 397 OF 2018

...

Shri Tejrao S/o Natthuji Raut,
Aged about: 73 years, Occu: Retired,
R/o: New Mata Mandir, Naik road,
Near Pawar's house, Nagpur.

... **APPELLANT**

- - V E R S U S - -

Shri Vijayji Pakalwar,
Aged about: 55 years, Occupation: Business,
R/o Vidya Nagar, Modern school road,
Koradi road, Bhokara, Nagpur. (P.S. Koradi)

... **RESPONDENTS**

Mr. N.V. Fulzele, Advocate for the Appellant.

None for the Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 04, 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 10/11/2017 passed below Exh.-1 by the learned Judicial Magistrate First Class, Nagpur, in Summary Criminal Case No.10764/2012, whereby the learned Magistrate dismissed the complaint for want of prosecution, resulting in the acquittal of the accused.

4. It appears that this Court issued notice on 11/04/2018. The respondent was served with the notice, and after service, this Court, by order dated 20/06/2018, admitted the petition and directed to put up the appeal for final hearing. It appears that thereafter, the respondent chose not to appear.

5. I have heard the learned counsel for the appellant. I have also perused the impugned order and the entire record. It appears from the record that the order of dismissal was passed on 10/11/2017.

6. The learned counsel appearing for the appellant submits that the Court ought not to have dismissed the complaint for want of prosecution, as the matter was referred for mediation. The mediation report was not received for several months and was ultimately received on 07/11/2017. Thereafter, it appears that the matter was posted on 10/11/2017. He further submits that he was under wrong impression that the matter was kept for the mediation report on 02/12/2017 and inadvertently he has noted the said date, i.e., 02/12/2017. However, he was unaware of the fact that the mediator had already sent the report. The appellant was willing to proceed with the matter. In fact, after filing of the complaint, the evidence on behalf of complainant was led and the matter was kept for cross-examination, however, before dismissal the accused/respondent on 05/02/2015 has filed Pursis stating that he is ready to pay the entire amount, and therefore, he submits that under such circumstances, Court ought not to have dismissed the complaint.

7. 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.”

8. 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.

9. Admittedly, in the present appeal, the respondent is duly served. Accordingly the matter was admitted, however, even at the stage

of admitting the matter, the respondent was absent. The matter is pending since 2018. After perusal of the impugned order, the *roznama* placed before me and the Pursis dated 05/02/2015, it appears that the matter was referred for Mediation. The report of the Mediator was not received since long as could be gathered from the notice in the *roznama*. However, it appears that the report of the Mediator was received on 07/11/2017 and the matter was immediately kept on 10/11/2017. It further appears that as was argued by the learned counsel for the appellant that inadvertently he has noted wrong date and he was under impression that he is required to be present before the Mediator on 02/12/2017, and therefore, he was not present on 10/11/2017. It further appears that the Pursis which is marked as Exh.-30, filed by the respondent / accused depicts that he was ready and willing to pay the entire amount. It appears that based on this Pursis the matter was referred to Mediation, however, for a long period, the mediation process was going on, and thereafter, on 07/11/2017, the mediation report was filed, and immediately after 3 days the matter was kept and the Court dismissed the complaint under Section 256 of the Code of Criminal Procedure and the accused was acquitted.

10. Considering the above facts and circumstances of the case, the interference of this Court is required when there is a hyper-technical view taken by the Court below. The principles of natural justice is necessary to be followed and the Court ought to have given sufficient opportunity to the appellant. The fact remains that the appellant had adduced the evidence and the matter was kept for cross-examination, and thereafter, the Pursis was filed by the accused/respondent which shows that he was ready and willing to pay the amount. Therefore, it appears that the matter was referred to Mediation and for a long period the mediation proceedings were going on. On 07/11/2017, mediation report was submitted to the Court and on 10/11/2017 the matter was kept before the Court and it was dismissed accordingly. The Court has lost sight of the fact that when the respondent was ready to pay amount, under such circumstances, the Court ought not to have dismissed the complaint for want of prosecution under Section 256 of Cr.P.C. Further as soon as the report was received, the Court ought to have given sufficient opportunity to the appellant to appear before the Court, however, merely after 3 days the matter was kept and it was dismissed in default by acquitting the accused.

11. Considering the above facts and circumstances, case is made out to interfere in the impugned order. Hence, the following order:-

ORDER

- (i) The Appeal is **allowed**;
- (ii) The impugned order passed by the learned 25th Judicial Magistrate First Class, Nagpur, in Summary Criminal Case No.10764/2012, dated 10/11/2017, 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.10764/2012, 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 12/01/2026;

(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.25,000/-. 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]