



Judgment

Cr.APPEAL-422-2014

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

CRIMINAL APPEAL NO. 422 OF 2014

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- 1] Sarda Power and Steel Ltd.,
Formerly known as Hytech Ispat Ltd. At 40,
Great Nag Road, Nagpur,
Through Its Director,
Shri Ajay s/o Shyamsunder Soni.
- 2] Ajay s/o Shyamsunder Soni,
Aged About : 53 years, Occ: Director,
Add.: 40, Great Nag Road, Nagpur.

... **APPELLANTS**

- - **V E R S U S** - -

- 1] Shree Swami Samarth Steel Centre,
Plot No.702, Rajaram Chowk,
Timber Market, Kolhapur,
Through its partner,
Sunil Vyankatesh Kulkarni.
- 2] Sunil Vyankatesh Kulkarni,
Aged About: Major: Occ: Business,
(Partner Shree Swami Samarth Steel Centre),
Plot No.3032, A Ward, Tarabai Road, Kolhapur.

... **RESPONDENTS**

Mr. Mayank Singade, Advocate for the Appellants.

None for the Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 25, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellants. Though the respondents are served, none appeared for the respondents.

2. Admit.

3. The present appeal is filed for quashing and setting aside the order dated 10/12/2012 passed below Exh.-1 by the learned 8th Joint Judicial Magistrate First Class, (Special 138 Court), Nagpur, in Summary Criminal Case No. 4726/2005, whereby the learned Magistrate dismissed the complaint for want of prosecution, resulting in the acquittal of the accused.

3**4.** Brief facts of the case are that:

The appellant No.1 is a company incorporated under the Companies Act, 1956, engaged in the manufacture and supply of steel materials, represented through its Director Shri Ajay S. Soni. Respondent No.1 is a partnership firm in the retail steel business, represented by its partners, one of whom, Shri Amrut Ghadge, expired during the proceedings. The respondents had purchased TMT bars from the appellant and, towards discharge of liability, issued cheque No. 007456 dated 11/11/2004 for Rs.3,36,932/- drawn on Shree Mahalaxmi Co-operative Bank Ltd., Kolhapur. The cheque was dishonoured with the remark "Not Arranged For" on 29/11/2004. The appellant served a statutory notice dated 18/12/2004 under Section 138 of the Negotiable Instruments Act, which was duly received by the respondents, but they did not make payment. Consequently, the appellant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973, for an offence under Section 138 of the Negotiable Instruments Act, 1881,

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registered as Summary Criminal Case No. 4726/2005 before the Judicial Magistrate First Class, Nagpur. On 10/12/2025, the Trial Court dismissed the complaint for want of prosecution and acquitted the accused by passing the following order:

“ The matter is lingering without any progress since last many dates. The record shows that the complainant is absent since long. No steps have been taken for securing the presence of the accused inspite of specific order passed by this Court at Ex. 1. Today, the complainant is called repeatedly up to this 4.30 PM. He is absent. His advocate is also absent. It shows clearly that the complainant has lost his interest to proceed further with the matter. Hence the matter is dismissed under Section 256 of Cri.P.C. The accused is acquitted.”

5. The learned counsel for the appellant submits that the Trial Court ought not to have dismissed the complaint under Section 256 Cr.P.C. nor acquitted the accused, particularly when the respondents, though duly served with summons, never appeared before the Court at any stage. He submits that the Court was compelled to issue Non-Bailable

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Warrants on several occasions and that the appellant made genuine efforts to execute the warrants, including taking *Hamdast*, but was unable to serve the same. It is pointed out that on 30/08/2012 the appellant engaged a new counsel and, on the same day, moved an application seeking permission to serve the Non-Bailable Warrant through the Commissioner of Police, Kolhapur. Pursuant thereto, on 15/09/2012, the appellant received *hamdast* of the Non-Bailable Warrant for service upon the accused, and the matter was thereafter posted on 16/10/2012 for the return/report of the warrant. On 16/10/2012, both the complainant and his counsel remained present and the matter came to be adjourned to 01/12/2012 for the Commissioner's report. It is submitted that the counsel inadvertently failed to note the date 01/12/2012 in his diary, resulting in the non-appearance of the complainant and counsel on that day. The matter was then automatically posted for passing orders on 10/12/2012, but as the complainant and counsel had temporarily lost track of the case due to the earlier

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bona fide lapse, they could not appear on 10/12/2012, leading to the impugned order of dismissal. The appellant submits that the record clearly shows regular presence before the Court on all earlier dates, continuous efforts to secure the accused by way of repeated Non-Bailable Warrants, and diligent prosecution of the complaint from the year 2005 up to 2012. It is therefore urged that the solitary absence on 01/12/2012 and the consequential absence on 10/12/2012 were purely accidental and ought not to have resulted in dismissal of the complaint.

6. 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

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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.

8. The record shows that the appellant had been diligently prosecuting the complaint and had regularly attended the proceedings. After engaging a new advocate on 30/08/2012, further steps were taken to execute the Non-

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Bailable Warrant, including receiving *hamdast* on 15/09/2012 and appearing before the Court on 16/10/2012, when the matter was adjourned to 01/12/2012 for the Commissioner's report. The appellant's absence on 01/12/2012 occurred due to a *bona fide* mistake in noting the date, and the consequent absence on 10/12/2012 was a natural result of losing track of the matter. Despite this being the only lapse after years of consistent diligence, the Trial Court proceeded to dismiss the complaint under Section 256 Cr.P.C. without affording an opportunity to explain the inadvertent absence. In view of the appellant's continuous efforts to prosecute the complaint and to secure the presence of the accused, the dismissal appears mechanical and not in consonance with the ends of justice.

9. A single inadvertent absence on 01/12/2012, due to a *bona fide* oversight, could not justify dismissal of the complaint and acquittal of the accused under Section 256 Cr.P.C. The Trial Court passed the order on 10/12/2012

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without allowing the appellant to explain or continue prosecuting the case, despite repeated efforts to serve Non-Bailable Warrants and regular appearances on prior dates, thereby causing potential injustice under Section 138 of the Negotiable Instruments Act.

10. Considering the circumstances reflected in the record, including the appellant's sustained efforts to prosecute the complaint over several years, regular appearances before the Trial Court, and the fact that the absence on 01/12/2012 occurred due to a *bona fide* oversight in noting the date in the case diary, it would have been appropriate for the Trial Court to grant a reasonable opportunity to enable the appellant to continue the prosecution and execute the Non-Bailable Warrants. Affording a fair chance to both parties to advance and contest the matter is a fundamental aspect of procedural fairness. The Trial Court, however, dismissed the complaint and acquitted the accused on the basis of this single, unintentional

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absence, without allowing the matter to remain pending or considering the substantial progress already made in the proceedings. Such a rigid approach, in a case where the appellant had consistently appeared and taken all possible steps to secure the accused's presence, undermines the proper adjudication of the complaint on merits. For these reasons, I deem it just and appropriate to allow the appeal. Hence, the following order:

ORDER

- (i) The Appeal is **allowed**.
- (ii) The impugned order passed by the learned 8th Joint, Judicial Magistrate First Class, (Special 138 Court), Nagpur, in Summary Criminal Case No. 4726/2005, dated 10/12/2012 dismissing the said complaint in default under Section 256 of the Code of Criminal Procedure and consequently acquitting the accused for the offence punishable

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under Section 138 of the Negotiable Instruments Act, is quashed and set aside.

(iii) Summary Criminal Case No.4726/2005, 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 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

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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**]