



Judgment

Cr.APPEAL-423-2014

1

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

CRIMINAL APPEAL NO. 423 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. 4727/2005, 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. Respondent No.1 is a partnership firm in the retail steel business, represented by its partners. The respondents had procured TMT bars from the appellant and, towards discharge of their liability, issued certain cheques, which were subsequently dishonoured. The appellant issued statutory notices under Section 138 of the Negotiable Instruments Act, 1881, which were duly served upon the respondents, but they failed to make payment. Thereafter, the appellant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate First Class, Nagpur, registered as Summary Criminal Case No. 4727/2005. The Trial Court, dismissed the complaint on 10/12/2012 for want of prosecution and acquitted the

4

respondents 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 of the Code of Criminal Procedure nor acquitted the respondents, particularly when the appellant company had been diligently prosecuting the complaint since 2005 and had never been lethargic in pursuing the matter. The respondents, though duly served with summons in Summary Criminal Case No. 4727/2005, failed to appear before the Trial Court at any stage, compelling the Court to issue Non-Bailable

5

Warrants on multiple occasions. The appellant made persistent efforts to execute the warrants, including taking *Hamdast*, but was unable to serve the same. It is further submitted that on 30/08/2012, the appellant engaged a new counsel and filed an application seeking permission to serve the Non-Bailable Warrant through the Commissioner of Police, Kolhapur. Subsequently, on 15/09/2012, the appellant received the *Hamdast* of the Non-Bailable Warrant for service upon the accused. The matter was listed on 24/09/2012 for return of the warrant and again on 30/10/2012 for return of the warrant, on both occasions the appellant was represented by its counsel. Thereafter, the matter was posted for 30/11/2012 for the Commissioner's report, however, due to a *bona fide* oversight in noting the date, the appellant and counsel could not appear. The matter was subsequently listed for passing orders on 10/12/2012, which was again missed as a consequence of the earlier lapse, leading to the impugned order of dismissal. The *roznama* of the case clearly reflects that the appellant, through

6

its officers and counsel, attended proceedings consistently on all other dates from 31/03/2012 onwards. The learned Trial Court, however, failed to take into account the appellant's regular attendance, diligent prosecution, and repeated efforts to secure the presence of the accused, and dismissed the complaint solely on the basis of the isolated non-appearances on 30/11/2012 and 10/12/2012. The learned counsel emphasizes that by dismissing the complaint, the Trial Court denied the appellant an opportunity to prosecute the complaint on merits and to establish the respondents' liability under Section 138 of the Negotiable Instruments Act, 1881. The appellant has a strong case on merit, and restoration of the complaint will not prejudice the respondents but is necessary to prevent irreparable loss to the appellant. It is therefore urged that the impugned order be set aside so that the appellant may be afforded a fair opportunity to prosecute its claim.

6. The learned counsel for the appellant relied on the

7

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.

8

8. The record shows that the appellant company had been diligently prosecuting the complaint since its institution and had regularly appeared before the learned trial court. After engaging a new advocate on 30/08/2012, the appellant applied for permission to serve the Non-Bailable Warrant, and subsequently received the *hamdast* on 15/09/2012. The matter was thereafter listed for 24/09/2012 for return of the warrant and again for 30/10/2012. The complainant and its counsel consistently attended all hearings, but due to a *bona fide* oversight in diary noting, they could not appear on 30/11/2012, and consequently were also absent on 10/12/2012, when the learned Trial Court dismissed the complaint for want of prosecution. The learned Trial Court, without considering the appellant's continuous efforts to secure the presence of the accused through repeated Non-Bailable Warrants and diligent prosecution of the case since 2005, passed the impugned order mechanically. The dismissal, in view of the appellant's *bona fide* lapse and long-standing

9

diligence, is unjust and denies the appellant an opportunity to have the complaint adjudicated on merit.

9. A single inadvertent absence on 30/11/2012, arising from a *bona fide* oversight in noting the date, could not justify the dismissal of the complaint and acquittal of the accused under Section 256 Cr.P.C. The learned Trial Court passed the impugned order on 10/12/2012 without providing the appellant an opportunity to explain or continue prosecuting the complaint, thereby denying the appellant an opportunity to have the complaint adjudicated on its merits, 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 from 2005 until 2012, regular appearances before the Trial Court, and the fact that the absence on 30/11/2012

10

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 absence, without allowing the matter to remain pending or considering the substantial efforts already made by the appellant in prosecuting the case, including engaging a new advocate on 30/08/2012, applying for permission to serve Non-Bailable Warrants, receiving *hamdast* on 15/09/2012, and attending all prior hearings. Such a rigid approach, in a case where the appellant had consistently pursued the matter and made diligent efforts to secure the accused's presence, undermines the proper adjudication of the complaint on merits. For these reasons, it is 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. 4727/2005, 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 under Section 138 of the Negotiable Instruments Act, is quashed and set aside.

(iii) Summary Criminal Case No.4727/2005, 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.

12

(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.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**]