



Judgment

Cr.APPA-550-2025

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

CRIMINAL APPLICATION [APPA] NO. 550 OF 2025

IN

CRIMINAL APPEAL [STAMP] NO. 5280 OF 2025

...

M/s. Lokshahi Publication Pvt. Ltd.,
Having its registered office at Third Floor,
Thaper Enclave-II, 148,
University Library Road, Ramdaspath, Nagpur,
Through its authorized signatory,
Shri. Niraj S. Dubey,
Age- 50 years, Occupation-Service.

... **APPELLANT**

- - V E R S U S - -

M/s. Mahalakshmi Associates,
Through its proprietor,
Shri. Prashant Prabhakar Rao Vighneshwar,
Age- Adult, Occupation- Business,
R/o Near Sapna Talkies Road,
Main Road, Chandrapur @ Plot No. F/1,
Bakul Apartment, Datala Road,
Ramnagar, Chandrapur-442 401.

... **RESPONDENT**

Mr. P.B. Patil, Advocate for the Appellant.

None for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 18, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant. None for the Respondent.

2. Upon hearing the learned counsel for the appellant, leave is granted to prefer the appeal. Office is directed to register the appeal.

CRIMINAL APPEAL NO. _____ 2025:

3. **Admit.** The appeal is taken up for final hearing.

4. The present Appeal raises an exception to the order dated 02/01/2025 passed below Exh.1, by the learned 10th Joint Civil Judge Senior Division and Additional Chief Judicial

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Magistrate, Nagpur, in Summary Criminal Case No.7868/2019, wherein, the learned Magistrate was pleased to dismiss the complaint for want of prosecution, resulting into acquittal of the accused.

5. Brief facts of the case are that:

The appellant is a company incorporated under the Companies Act, 1956 and is engaged in the business of news and media services. It publishes a Marathi newspaper titled *Daily Lokshahi Wartha*, which has circulation in the Vidarbha region and certain other parts of Maharashtra. The Managing Director of the appellant company had authorised Shri Niraj S. Dubey to initiate the present proceedings. The respondent is the sole proprietor of M/s Mahalakshmi Associates, a firm engaged in advertisement related activities. Under the Service Agreement dated 01/04/2017, the respondent was responsible for collecting advertisements intended for publication in the appellant's newspaper. Under the terms of the agreement, the

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respondent was required to remit the advertisement amounts collected from various customers. However, an amount of Rs. 34,13,330/- remained unpaid from the respondent. To discharge this liability, the respondent issued cheque No. 16533 dated 30/07/2018 for Rs. 34,13,330/-, drawn on Bank of India, Bamni Branch, Chandrapur. When presented by the appellant through its banker, the cheque was dishonoured on 02/08/2018 with the remark "Funds Insufficient."

6. The appellant thereafter issued a statutory notice dated 29/08/2018 calling upon the respondent to make payment of the cheque amount within the prescribed period. The notice was served on 01/09/2018, but no payment was made. The appellant then instituted Summary Criminal Case No. 7868/2019 before the Trial Court under the provisions of the Negotiable Instruments Act. On 02/01/2025, the appellant and its counsel were absent before the Trial Court. The Trial Court, noting their absence, proceeded to acquit the respondent

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for the offence under Section 138 of the Negotiable Instruments Act. The present proceedings have been filed challenging the said order of acquittal.

7. From the record, it appears that the learned Trial Court dismissed the complaint and acquitted the respondent on the ground of non-appearance of the appellant and its counsel. The appellant contended that such dismissal caused prejudice, as the absence was not deliberate but due to confusion arising from multiple transfers of the case between different courts, which resulted in difficulty in keeping track of hearing dates. It further appears that the learned Trial Court did not issue notice to the appellant before dismissing the complaint, nor was the matter kept for passing the dismissal order on a subsequent date. The complaint was dismissed on the same day it was fixed for evidence, without providing an opportunity to present submissions. The record indicates that the cheque in question involves a substantial amount, and the appellant had taken

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steps to comply with procedural requirements, including applications for adjournments and payment of costs, which could not be effected due to frequent transfers. In view of these factors, the learned Trial Court did not follow the procedure required to ensure a fair opportunity to the appellant, resulting in a dismissal that appears to be inconsistent with the principles of natural justice.

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

10. From the record, it appears that the appellant had been regularly attending the proceedings, with the evidence scheduled on 15/01/2024 before the learned 11th Joint Civil Judge Senior Division and ACJM, Nagpur. The matter was adjourned to 26/03/2024 for evidence before the learned 9th Joint Civil Judge Senior Division and ACJM, Nagpur. However, on 25/06/2024, the case was transferred to the learned 11th

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Joint Civil Judge Senior Division and ACJM, Nagpur for further proceedings, and another date was fixed for 05/08/2024. Subsequently, on 12/09/2024, the matter was again transferred to the learned 10th Joint Civil Judge Senior Division and ACJM, Nagpur. The case was further adjourned to 06/12/2024, and the evidence was once again scheduled. On 02/01/2025, the learned 10th Joint Civil Judge Senior Division and ACJM, Nagpur disposed of the matter.

It is evident that due to the frequent transfers of the case between different courts, the appellant and its counsel faced challenge in maintaining track of the proceedings. The appellant submits that this may have contributed to the absence on certain hearing dates, despite consistent attendance on prior occasions. In light of these circumstances, it was incumbent upon the learned Trial Court to adopt a more cautious approach before dismissing the complaint. The absence on a single date should not have led to an automatic dismissal, especially given the history of regular attendance and the frequent transfers of

the case.

11. From the record, it appears that the complaint was dismissed despite the appellant's regular attendance on earlier dates. Considering the frequent transfers of the case among 11th, 9th, and 10th Joint Civil Judges Senior Division and ACJM, Nagpur, absence on a solitary date cannot be treated as sufficient ground for dismissal. The learned Trial Court ought to have provided an opportunity for the appellant to be heard before dismissing the complaint, as such dismissal would frustrate the object of Section 138 of the Negotiable Instruments Act.

12. Considering the attending circumstances appearing on record, including the appellant's regular appearances, the frequent transfers of the case among 11th, 9th, and 10th Joint Civil Judges Senior Division and ACJM, Nagpur, and the adjournments granted for procedural compliance, it would be

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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 was held that the principles of natural justice are required to be followed by giving an opportunity to the complainant to prosecute the complaint on merits and to the accused to contest it. The learned Trial Court, by dismissing the complaint on a solitary absence without fixing a separate date for the dismissal order, adopted a harsh and technical approach, thereby frustrating the object of Section 138 of the Negotiable Instruments Act and 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 below Exh.-1 by the learned 10th Joint Civil Judge Senior Division

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and Additional Chief Judicial Magistrate, Nagpur, in Summary Criminal Case No.7868/2019, dated 02/01/2025, 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.7868/2019, 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 17/12/2025.

(v) The appellant shall proceed with the

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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**]