



Judgment

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

CRIMINAL APPEAL NO. 687/2024.

Purushottam Noorchandji Bisen,
Age 38 years, Occupation Business,
resident of Bhagat Layout, Prabhag No.17,
Behind the BSNL Office, Seloo,
Tahsil Seloo, District Wardha. ... APPELLANT.

VERSUS

Rajkumar Ishwar Deware,
Age 36 years, Occupation Business,
resident of Raj Photo Studio, Mahure
Complex, Near Bus Stop Seloo,
and Ward No.5, Kothewada, Seloo,
Tahsil Seloo, District Wardha. ... RESPONDENT.

Mr. C.G. Deo, Advocate h/f. Mr.D.R. Bhoyar, Advocate
for the Appellant.
Shri D.U. Thakare, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.
DATE : OCTOBER 06, 2025.

ORAL JUDGMENT.

Heard. Rule. Rule is made returnable forthwith and by

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consent of the learned Counsel for the parties, the Appeal is taken up for final disposal.

Admit.

2. By present Appeal filed by the appellant under Section 378[4] of the Code of Criminal Procedure, challenge is raised to the order dated 30.01.2020 passed by the Judicial Magistrate, First Class [2nd Court], Seloo below Exh.1 in S.C.C. No.900/2016, by which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act came to be dismissed for want of prosecution, resulting into acquittal of the respondent.

3. Brief facts of the case are that the appellant/complainant and respondent/accused are friends and considering this friendship, on 08.10.2013, the complainant advanced an amount of Rs.2,50,000/- in cash to the respondent. In February, 2015 the complainant requested the accused for refund of the aforesaid amount, however, accused sought one week's time for the said purpose. On 03.03.2015, the complainant visited accused and demanded the said amount, on which dated the

accused issued a post dated cheque of Rs.2,50,000/- dated 25.07.2016 drawn on State Bank of India. This cheque was presented by the complainant with his Banker – State Bank of India, Seloo Branch but, the same was returned back on 26.07.2016 with an endorsement “funds insufficient”. The complainant issued a legal notice to the accused on 04.08.2016, and on 20.09.2016, he filed a complaint before the Judicial Magistrate First Class, Seloo which was registered as S.C.C.No.900/2016.

4. In this Summary Proceeding, process was issued, and accordingly the accused appeared, and his plea was recorded. The matter was also placed before the Lok Adalat on 07.11.2017, but, no settlement could be arrived and therefore, the matter was posted for evidence on 21.12.2017. The complainant has submitted his evidence on affidavit on 09.08.2018 and his cross-examination was completed on 17.09.2018. Accused on 16.10.2018 filed an application for re-examination of the complainant, which was allowed on 04.07.2019. Examination of complainant was completed on 11.07.2019 and on 24.09.2019 the matter was posted for further evidence of complainant. It is since 24.09.2019, the witness of complainant was not available, and though an

application for adjournment was filed, the same was rejected and matter was kept for dismissal. Thereafter the matter was listed on 26.11.2019, 30.12.2019 and ultimately on 30.01.2020, the learned Judicial Magistrate First Class, Seloo dismissed the complaint for want of prosecution, thereby acquitting the accused of the charge of offence punishable under Section 138 of the Negotiable Instruments Act. It is this order, which is subject matter of challenge in this appeal.

Initially the complainant has filed Criminal Revision Application No.6/2020 before the Sessions Court, Wardha, which was dismissed on 06.06.2023, and thus, a considerable time was spent before the wrong forum.

5. The learned counsel for the appellant submits that the order dated 30.01.2020 ought not to have been passed by the learned Magistrate, as the matter was regularly prosecuted by the appellant. However, on few dates he was absent and though application was moved for adjournment, the same was erroneously rejected and eventually the matter was dismissed for want of prosecution. He further submits that he

is ready and willing to prosecute the matter by taking necessary steps.

6. On the other hand, the learned Counsel for the respondent / accused supported the impugned order and prayed for dismissal of the appeal.

7. I have perused the impugned order and gone through the record. The impugned order was passed on 30.01.2020 dismissing the complaint filed by the complainant/appellant for want of prosecution. Perusal of the roznama shows that after 11.07.2019, the matter was posted for evidence thereafter, on two dates i.e. 24.09.2019 and 26.11.2019 the complainant was absent. On 30.01.2020 the impugned order dismissing the complaint came to be passed by the Judicial Magistrate First Class, Seloo. No doubt, the appellant was absent on some dates, and the Court below was pleased to dismiss the complaint for want of prosecution, as a result of which the accused was acquitted under Section 256 of the Criminal Procedure Code. Needless to mention to meet the ends of justice it is necessary to allow the present appeal on the assurance as was submitted by the learned counsel that the

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appellant is ready and willing to prosecute the matter.

8. It would be useful to refer to the case of **Shri Shaikh Akbar Talab .vrs. Shri A.G. Pushpakaran & Another, - 2018 ALL MR (Cri) 1208**, 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, as well as, an opportunity is to be given to the accused to contest the complaint on merits. The principles of natural justice are the cardinal principle of law and backbone of judicial process. Opportunity of hearing and right to present the case are statutory incorporation of natural justice by mandating procedural safeguards, and therefore, the Court below ought not to have taken a harsh and hyper-technical view by dismissing the complaint for want of prosecution which violates procedural safeguards. For the reasons stated above, I am inclined to allow the appeal. Hence, the following manner.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The impugned order passed by the learned Judicial Magistrate, First Class, Seloo, District Wardha below Exh.1 in Summary Case No.900/2016 dated

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30.01.2020, dismissing the complaint of the appellant 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 hereby quashed and set aside. The said proceedings are restored back to file for its adjudication on merits.

- (iii) The appellant / complainant shall appear before the Trial Court on 13.10.2025 and abide by its further directions.
- (iv) 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.
- (v) The above order is subject to payment of cost of Rs.5,000/-. The cost shall be paid to the respondent herein.

JUDGE