



Judgment

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

CRIMINAL APPEAL NO. 459/2021.

Ritesh s/o Madhukarrao Bhoyar,
Aged about 46 years, Occupation Service,
resident of Ambadevi Ward, Opposite
Tahsil Office, Warora, Tahsil Warora,
District Chandrapur (Maharashtra State). ... **APPELLANT.**

VERSUS

Amol s/o Sarjerao Chaudhary,
Aged 37 years, Occupation Business,
resident of behind the house of Babulal
Chaudhary, Yatra Ward, Warora,
Tahsil Warora, District Chandrapur,
(Maharashtra State). ... **RESPONDENT.**

Mr. S.N. Singh, Advocate for the Appellant.
Mr.S.V. Sirpurkar, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.
DATE : NOVEMBER 12, 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 18.09.2021 passed by the Judicial Magistrate, First Class, Warora below Exh.1 in S.C.C. No.1251/2017, by which the application filed by the accused (Exh.23) for dropping the proceeding came to be allowed and recording that the matter is fixed for evidence, and the complainant is absent, the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act came to be dismissed, resulting into acquittal of the respondent.

3. Brief facts of the case are that the appellant/complainant and respondent/accused are friends and are in visiting terms, having family relations. The respondent requested the appellant for hand loan, and the appellant in turn advanced total hand loan of Rs.2,56,000/- from time to time to the respondent. When the appellant requested the respondent

for return of the said hand loan, he issued a cheque No.043390 dated 14.07.2017 drawn on IDBI Bank, Warora amounting to Rs.2,56,000/-, however, the same was dishonoured on 15.07.2017 for the reason “Funds Insufficient”. The appellant accordingly issued legal notice to the respondent on 26.07.2017, which was served on the respondent on 28.07.2017, inspite of this, the respondent failed to repay the amount. The appellant therefore, filed a complaint under Section 138 of the Negotiable Instruments Act on 01.09.2017, which was registered as Summary Criminal Case No.1251/2017. In this proceeding process was issued and the accused/respondent has put in his appearance.

4. This Summary Proceeding was placed before the Lok Adalat for 6 times during the Covid period, but, it could not be settled. Thereafter also on 01.08.2021 again the matter was placed before Lok Adalat, but, again no settlement could be arrived. The matter was posted for evidence on 18.09.2021, on which date the appellant/complainant filed an application for adjournment. In the meantime, the respondent/accused also filed an application praying for dropping the proceeding. This application is at Exh.23. On 18.09.2021, the learned trial Court

took up the matter and recording that from 03.12.2018 no evidence is led by the complainant, and he is not personally present, therefore, no purpose would be served by adjourning the matter, and on the other hand it allowed the application filed by the accused/respondent (Exh.23) and dismissed the complaint, thereby acquitting the respondent vide Section 256 of the Code of Criminal Procedure. Hence, this appeal.

5. The learned counsel for the appellant submits that the order dated 18.09.2021 ought not to have been passed by the learned Magistrate, as the complainant has moved an application for adjournment. It is his contention that the matter is being regularly prosecuted by the appellant. 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 18.09.2021 dismissing the

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complaint filed by the complainant/appellant. Perusal of the roznama shows that at number of times the matter was placed before the Lok Adalat, but, no fruitful result could be achieved. Perusal of roznama further shows that the appellant was absent on number of occasions and failed to prosecute the matter, though the matter was posted for evidence. That the respondent/accused has filed an application (Exh.23) for dropping of the proceedings on 18.09.2021, on which date also an application for adjournment was filed on his behalf. The learned Trial Court taking note of earlier conduct of the appellant, and the application filed by the respondent/ accused dismissed the complaint, as a result of which the accused was acquitted under Section 256 of the Criminal Procedure Code.

8. No doubt it appears from the record that the complainant on number of occasions remained absent, however, the fact cannot be ignored that for about 6 times the matter was kept in Lok Adalat, but, it could not be settled. In between the intervening period, there was also a pandemic situation due to Covid-19, therefore, considering the circumstances which are apparent, the learned Judicial Magistrate, First

Class, Warora ought not to have dismissed the complaint, and ought not to have acquitted the accused under Section 256 of the Code of Criminal Procedure.

At this juncture, it is to be mentioned that opportunity to the complainant to prosecute his complaint on merits is always a paramount consideration. It is a matter of record that the matter was listed for evidence on 18.09.2021, however, the complainant has filed an application for adjournment on the said date. The very fact of filing of application itself would indicate that the appellant is not negligent and interested in prosecuting his case. Therefore, in the interest of justice, and on the assurance of the learned Counsel for the appellant that the appellant is ready and willing to lead evidence and in order to grant one more opportunity to the appellant, it is desirable to quash and set aside the order impugned dated 18.09.2021.

9. 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

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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, Warora, District Chandrapur below Exh.1 in Summary Case No.01251/2017 dated 18.09.2021, 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 24.11.2025 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.15,000/- (Rs. Fifteen Thousand only). The cost shall be paid to the respondent herein.

JUDGE