



Judgment

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

CRIMINAL APPLICATION [APPA] No. 762/2024
AND CRIMINAL APPEAL ST.NO.6615/2023.

Jaiprakash Hiralal Mishra,
Aged about 42 years, Occupation
Priest, resident of Ward No.2, Kelwad,
Tahsil Saoner, District -Nagpur. ... **APPLICANT.**

VERSUS

Raviraj Gayaparasad Ingole,
Age 39 years, Occupation Private
Business, resident of Waghade (Near
Gram Panchayat Office), Tahsil Saoner,
District Nagpur
Police Station Saoner. ... **NON-APPLICANT.**

Mr. N.R. Kanungo, Advocate for the Applicant.
None for the Non-applicant – Served.

CORAM : M.M. NERLIKAR, J.
DATE : SEPTEMBER 30, 2025.

ORAL JUDGMENT.

Heard learned Counsel for the applicant/appellant. Though

Rgd.

served, the non-applicant has chosen not to appear.

2. The present application is being filed seeking leave to file appeal against the order dated 03.02.2023 passed below Exh.1 by the learned Judicial Magistrate First Class, Saoner in Summary Criminal Case No.345/2019, whereby the complaint filed by the applicant/appellant under Section 138 of the Negotiable Instruments Act came to be dismissed for not taking steps, resulting into acquittal of the non-applicant/accused.

3. Brief facts of the case are that the applicant/appellant and the non-applicant are acquainted with each other. The applicant/appellant is Pandit by profession and undertakes different types of pooja. On 01.12.2018 the non-applicant had approached the applicant and stating need of money requested for an amount of Rs.1,60,000/-, which the applicant/appellant has given to him in cash on the same date. In lieu, the non-applicant had given a cheque to the applicant/appellant for the aforesaid amount of Rs.1,60,000/- with assurance of its honour. The said cheque was drawn on State Bank of India, Saoner Branch. The applicant

placed the said cheque with his Banker – Central Bank of India, Saoner Branch on 27.12.2018, however, the same was dishonoured on 28.12.2018 for the reasons “funds insufficient”. On this, the applicant issued legal notice on 14.01.2019, and on failure of the non-applicant to comply with the same, on 01.03.2019 filed proceedings under Section 138 of the Negotiable Instruments Act before the trial Court which came to be registered as SCC No.345/2019. In this proceeding the learned trial Court on 03.02.2023 passed an order below Exh.1 dismissing the complaint since no steps are taken and acquitted the accused. It is this order which is subject matter of challenge in this petition.

4. The learned counsel for the applicant/appellant submits that the order dated 01.09.02023 ought not to have been passed by the learned Magistrate, as the matter was regularly prosecuted and his Advocate was attending the Court. He further submits that there was change of Advocate in the matter also on 21.11.2022. It is further submitted that the applicant/appellant he is ready and willing to prosecute the matter further by taking necessary steps.

5. Though served, the non-applicant has chosen not to appear in the matter. Perusal of roznama reveals that on certain occasion, the counsel for the applicant was present. It is also revealed that the matter was pending for evidence. The learned trial Court has on 21.11.2022 recorded that “*Exh.15 – Vakalatnama filed by P.M. Maheshwari adv. For applicant – filed. Say given by C.F. N.A. below Exh.14. Case is adj. For evidence/argument below Exh.14.*” and on the next date i.e. 23.12.2022, the Court recorded that “*Applicant and Counsel present. N.A. absent Counsel present. Order passed below Exh.1. Matter kept for dismissal order. Case adjourn for Evidence.*” On the adjourned date i.e. on 03.02.2023 the trial Court recorded that - “*Complainant and counsel absent. N.A. and counsel absent. Order passed below Exh.1. Accused is acquitted for the offence punishable u/s 138 of N.I. Act vide Sec.256 of Cr.P.C. Bail bond of accused stand cancelled. Proceeding closes. ACQUITTED. Proceeding is closed.*”

6. I have perused the order and gone through the record. It seems from the impugned order was passed below Exh-1 on 03.02.2023, when the matter was kept for dismissal. However, on this date the

complainant and his advocate were absent. It is not clear from the roznama dated 23.12.2022 that when the applicant and counsel were present, why the matter was kept or posted for dismissal order on 03.02.2023. No doubt, the applicant/appellant was absent on several occasions, 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 at this juncture that it is true that the applicant/appellant has not given any reason to demonstrates his absence, however, to meet the ends of justice and as was submitted by the learned counsel for the applicant/appellant that he is ready and willing to prosecute the matter, I am inclined to consider the prayer made by him.

7. 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 and accordingly violates procedural safeguards. For the reasons stated above, I hereby grant leave to file appeal. Office is directed to register the appeal, and by this order the said appeal is allowed in the following manner.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The impugned order passed by the learned Judicial Magistrate First Class, Nagpur below Exh.1 in Summary Criminal Case No.345/2019 dated 03.02.2023, 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 quashed and set aside. The said proceedings are restored back to file for its adjudication on merits.

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- (iii) The appellant / complainant shall appear before the Trial Court on 06.10.2025.
- (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 deposited by the appellant with the trial Court. The trial Court to disburse the same to the respondent.

JUDGE