



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

CRIMINAL APPLICATION (APPA) NO.940/2025 IN
CRIMINAL APPEAL (ST) NO. 6445/2024

Shri Vinod S/o. Ramchand Jethani,
Aged about 52 yrs., Occ. Business,
R/o. 52 yrs., Occ. Business,
R/o. Plot No.52, Sindhi Colony,
Khamla, Nagpur.,

...APPELLANT
(Ori. complainant)

VERSUS

1. Rajesh S/o. Amarlal Hemnani,
Aged about Major, Occ. Business,
2. Shri Mahesh S/o Amarlal Hemnani,
Aged about Major, Occ. Business,
3. Shri Suresh S/o Amarlal Hemnani,
Aged about – major, Occ. Business,
4. Vijay S/o Amarlal Hemnani,
Aged about Major, Occ. Business,

All 1 to 4 R/o. Plot No.342,
Khamla, Sindhi Colony near Shiv
Mandir, Nagpur – 440025.

...RESPONDENT
(Ori. Accused)

Ms. Diksha Jethani, Advocate for appellant/appellant
none for non-applicants/respondents.

CORAM : M. M. NERLIKAR, J.

DATE : 05.12.2025

Heard the learned counsel for the applicant/appellant though, duly served, none appears for the non-applicants/respondents. The application is filed seeking leave to file appeal. Leave granted. Application is disposed of.

CRIMINAL APPEAL (ST) NO. 6445/2024

ORAL JUDGMENT :

1. Heard the learned counsel for the appellant.
2. **Admit.** The present appeal is taken up for final hearing.
3. In this appeal, the order dated 12.01.2024 is under challenge passed by the 11th Jt. Civil Judge, Senior Division, Nagpur, wherein the complaint was dismissed for want of prosecution and the accused is acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act ("NI Act"). The said order is to be passed under Section 256 of the Code of Criminal Procedure. The learned counsel for appellant submits that the complainant/appellant has led the evidence in the month of November 2023. She further submits that as in the month of December 2023, surgery was performed on the complainant, he was admitted on 10.01.2024 and discharged on 11.01.2024 at about 05.00 pm. The appellant was pursuing the complaint as could be

gathered from the Roznama, however the respondent never appeared in the matter though he was duly served. The Court ought not to have dismissed the complaint for want of prosecution as the reasons are not proper and against the record.

4. Admittedly, on 12.01.2024, the order was passed below Exh.1 dismissing the complaint for want of prosecution. It appears from the order that, “for not taking steps since long” the complaint was dismissed for want of prosecution. The impugned order shows that from 10.10.2019, the complainant has not taken any step, therefore the impugned order came to be passed. She invited attention of this Court to further part of order, wherein it is observed by the Trial Court that:-

“the complainant and his Advocate are present. No steps are taken. Hence, I compelled to pass the following order:-

- 1. Complaint is dismissed for want of prosecution.*
- 2. The accused is acquitted of the offence punishable under Section 138 of the N.I. Act, 1881.*
- 3. Bail bonds, if any of the accused are cancelled.”*

Therefore, she has invited attention of this Court to the Roznama dated 24.11.2023, wherein it is shown that complainant and his Advocate were present, whereas accused and his Advocate were

absent. absent and his Advocate absent. Further, evidence on affidavit is filed by the complainant.

5. Upon hearing the learned counsel for appellant, it could be gathered that evidence was led by the complainant in the month of November 2023, however he could not remain present in the month of December 2023 as the surgery was performed on him and to support his contention, the discharge summary card is placed on Annexure-I, which shows that date of the admission of the appellant is 10.01.2024 at 09:44 am. The date of surgery is 10.01.2024 at 03.00 pm and date of discharge is 11.01.2024 at 05:00 pm. As could be gathered from Roznama that on several occasions, the complainant or his Advocate were present before the Court. Not only that, the evidence was also led by the complainant on 24.11.2023. It further appears that on 12.01.2024, the complainant and his Advocate were shown as absent. However, inadvertently, in the order, it is observed that complainant and his Advocate are present. In the impugned order, it is stated that since 10.10.2019, the complainant has not taken any step which is contrary to the record as the complainant has led evidence on 24.11.2023, which could be gathered from the Roznama placed on record. Therefore, it

appears that the learned Trial Court without going through the record of the matter has passed the impugned order. It is further to be noted that order is cryptic and perverse.

6. The learned counsel for the appellant relied upon this Court's judgment in ***Shri Shaikh Akbar Talab VS Shri A.G. Pushpakaran & Another, 2018 ALL MR (Cri) 1208***, particularly the observations in Paragraph 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 the light of the legal principles laid down in *Shaikh Akbar Talab* (supra), this Court holds that the learned Trial Court ought not to have dismissed the complaint for want of prosecution nor acquitted the

accused for the offence under Section 138 of the Negotiable Instruments Act.

8. Considering the attending circumstances appearing on record, it would be 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 is 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 is 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 deem it appropriate to allow the appeal. Hence,
the following order:-

(I) Appeal is allowed.

(II) The order dated 12.01.2024 passed by the 11th Jt. Civil Judge, Senior Division, Nagpur is hereby quashed and set aside.

(III) The matter is restored to its original position.

(IV) The learned counsel for appellant assures this Court that no adjournment would be sought before the Trial Court, except in exception circumstances.

9. Appeal stands disposed of in above terms.

(M. M. NERLIKAR , J.)

Gohane