



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

CRIMINAL APPEAL NO. 621 OF 2019

Deepak Kumar s/o Kanhailal Nagwni Vs. Abid Ali s/o Gaffar Ali

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

None for petitioner.

CORAM : M.M. NERLIKAR, J.

DATE : 28.11.2025

Initially, Mr.K.M./ V.K. Nankani, put in an appearance, and they were directed to file a paper-book, however, the matter was adjourned several times and the Advocate appearing for the appellant has not filed the paper-book. Therefore, this Court, by order dated 28.09.2022, issued notice to the appellant on the court's motion and it appears from the record that notice was served on the appellant. However, thereafter, none appeared for the appellant.

2. It was informed that Advocate Mr. K.M. Nankani, is no more. Neither the counsel nor the appellant appeared before this Court on many dates, nor has the respondent appeared.

3. The appeal is preferred against the order of 19th Joint Civil Judge Junior Division & JMFC, (Special Court for 138 N.I. Act, Nagpur, dated 16.02.2019,

wherein the accused was acquitted under Section 256 of the Code of Criminal Procedure as the case was dismissed for non prosecution.

4. It appears from the impugned order that the complainant has failed to take steps to serve the respondent/original accused, though several chances were given. It was observed that the case is of 2017; however, for two years, no steps were taken, though by order below Exhibit 1, which was passed on 24.09.2018, it was directed to take appropriate steps. However, thereafter, neither the complainant nor the counsel appeared and took the steps. It further appears that on 16.02.2019, the complainant as well as his counsel were called out till 3:30 p.m. none appeared on behalf of the appellant.

5. Even in this matter, though the appellant was served on the court's motion even before this Court, the appellant has failed to appear. I have decided to go through the entire record, and accordingly, in the grounds of the appeal memo, it is averred by the appellant that when the summons was issued by the Court to the respondent/accused, however, the report was not submitted by the concerned Officer of the Police Station Mominpura, Nagpur, and therefore, the fault cannot be attributed to the appellant, and therefore, it cannot be said that the appellant has acted carelessly and negligently at any point of time.

6. It is further averred that the appellant had gone out of the station for some business work, and the said fact was also not known by the counsel for the appellant. Accordingly, the appellant contacted his counsel and informed him that he was unable to attend the Court on the said date. The Court dismissed the matter at 3:30 p.m. on 16.02.2019, however, the counsel had approached the Court at about 3:45 p.m. The reason given by the appellant is nothing but an eyewash. There is nothing to infer that whatever has been said is gospel truth, apart from that the fact remains that even if the absence on 16.02.2019 is ignored, it appears that the appellant/complainant has failed to take steps to serve the respondent. Further, even if the report of the summons is not received, it was for the appellant/complainant to take steps to serve the respondent/accused; who cannot remain quiet for months and years together. Therefore, for all these reasons, I am not inclined to grant any relief and therefore, the appeal is dismissed.

(M.M. Nerlikar, J.)