



Judgment

Cr.APPA-927-928-929-2024

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

CRIMINAL APPLICATION [APPA] NO. 927 OF 2024
IN
CRIMINAL APPEAL [STAMP] NO. 8639 OF 2022
WITH
CRIMINAL APPLICATION [APPA] NO. 928 OF 2024
IN
CRIMINAL APPEAL [STAMP] NO. 8636 OF 2022
WITH
CRIMINAL APPLICATION [APPA] NO. 929 OF 2024
IN
CRIMINAL APPEAL [STAMP] NO. 8633 OF 2022

...

M/s Shreeji Infotech,
Through its Proprietor,
Mrs. Preeti Chandak,
Age-45 years, Occ-Business,
R/o Yamuna Sankul, Infront of Main Hospital,
Akola, Tal.& Dist. Akola.

... **APPELLANT**

- - V E R S U S - -

M/S. Rohit Communication,
Through its Proprietor,
Rohit S/o Vrajilal Gaglani,
Age-46 years, Occ-Business,

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R/o Ashish Bunglow, S.A. College road,
Beside Hotel Venus, Akola,
Tal.& Dist. Akola

... **RESPONDENT**

Mr. N.R. Tekade, Advocate for the Appellant.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 16, 2025.

COMMON JUDGMENT :

Heard the learned counsel for the appellant. None for the Respondent.

2. Upon hearing the learned counsel for the appellant, leave is granted to prefer the appeal. Office is directed to register the appeal.

CRIMINAL APPEAL NO. _____ 2025:

3. **Admit.** The appeal is taken up for final hearing.

4. The present applications are being filed seeking leave

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to file appeal against the orders dated 24/09/2021 passed below Exh.1 by the learned Judicial Magistrate First Class, (Court No.2), Akola, in Summary Criminal Case Nos.5693/2019, 5694/2019 and 5695/2019. The appellant further prays for quashing and setting aside of the said orders, wherein, the learned Magistrate was pleased to dismiss the complaint for want of prosecution, resulting into acquittal of the accused.

5. Brief facts of the case are that:

The appellant is engaged in the wholesale and retail business of mobile phones and accessories. The respondent, who was in regular need of mobile phones and related accessories, approached the appellant and obtained various goods on credit. Despite repeated requests by the appellant for payment, the respondent failed to discharge his liability. Upon persistent follow-ups, the respondent issued five post-dated cheques in favour of the appellant, drawn on his firm's account,

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dated 13/09/2019. Subsequently, the appellant presented one of the cheques, amounting to Rs.15,383/-, for encashment. However, the cheque was dishonoured with the bank's endorsement "Account Closed." Thereafter, the appellant issued a statutory demand notice dated 12/10/2019 in (Cr.APPA No.927/2024), dated 14/10/2019 in (Cr.APPA No.928/2024), and dated 15/10/2019 in (Cr.APPA No.929/2024), to the respondent, calling upon him to pay the cheque amount. Despite due service of the notice, the respondent failed to comply with the demand. Consequently, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate First Class, Akola, on 19/11/2019. Upon satisfaction, the learned Magistrate issued process on 07/02/2020. Despite service of summons, the respondent failed to appear, leading to an application for issuance of a warrant. However, during the pendency of the said application, due to the disruptions caused by the COVID-19 pandemic, the matter was adjourned multiple times. On

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07/09/2021, the appellant and his counsel were unable to appear, and the matter was thereafter posted for dismissal. Eventually, on 24/09/2021, the learned Trial Court dismissed the complaint for want of prosecution and acquitted the respondent under Section 256 of the Criminal Procedure Code. Being aggrieved by the said order, the appellant has preferred the present appeal challenging the dismissal of the complaint and the acquittal of the respondent. On 24/09/2021, the learned Judicial Magistrate First Class, (Court No.2), Akola, passed the following order :-

“ The case is dismissed under section 256 of the Code of Criminal Procedure.”

6. The dismissal of the complaint by the learned Trial Court is primarily based on the ground that the complainant has failed to remain present and take effective steps in the matter, which, according to the Trial Court, resulted in prolonged pendency without progress. The order dated 24/09/2021 indicates that the matter was taken up as part of a

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special drive initiated pursuant to the communication issued by this Court vide No. B(Gen)-1001/2021/1114 dated 31/08/2021, which directed early disposal of long-pending matters. It was recorded that the complainant was absent since long, that no steps were being taken against the accused, and that in absence of progress, further pendency would be unjustified. In that context, the complaint came to be dismissed under Section 256 of the Code of Criminal Procedure.

7. Upon perusal of the *roznama* entries placed on record, it is noted that on 22/02/2021, the complainant's advocate was present and had moved an application for issuance of bailable warrant against the accused. The matter, however, could not proceed for want of bail bond. On 30/04/2021, the matter stood adjourned in view of directions issued by this Court and the District and Sessions Court, Akola. On the subsequent dates, i.e., 07/09/2021 and 24/09/2021, the *roznama* reflects absence of both parties. While it is true

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that consistent and active prosecution is required on the part of the complainant, it also appears from the record that the complaint had earlier been actively pursued and had not remained entirely dormant. The observations made by the Trial Court in the dismissal order, though general in nature, do not appear to have taken into account the specific instances of attendance and steps taken prior to the dates in question. In such circumstances, where the matter was otherwise pending for final adjudication, and the reasons for adjournments were not solely attributable to the complainant, the Trial Court was expected to exercise its discretion judiciously. A balanced approach, keeping in mind both the need for expeditious disposal and the complainant's right to be heard on merits, would have better served the ends of justice.

8. The learned counsel for the appellant relied on the judgment of this Court in the case of ***Shri Shaikh Akbar Talab VS Shri A.G. Pushpakaran & Another, 2018 ALL MR (Cri) 1208,***

and referred to the observations made in Paragraph No.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.”

9. Upon perusal of the record and in light of the law laid down by this Court in the case of *Shri Shaikh Akbar Talab* (supra), I am of the considered view that the Learned Trial Court ought not to have dismissed the complaint for want of prosecution, nor should have acquitted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

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10. From the record, it is evident that although the complaint came to be dismissed on 24/09/2021 for want of prosecution under Section 256 of the Code of Criminal Procedure, the appellant had been actively pursuing the matter prior to that date. The *roznama* dated 22/02/2021 shows the complainant's counsel was present and had sought issuance of a bailable warrant against the accused, who was absent. On 30/04/2021, the matter was adjourned in view of directions from this Court and the District and Sessions Court, Akola, which temporarily stalled progress. These entries indicate that the complainant had not abandoned the proceedings nor shown any consistent disregard for the process of law. While it is true that on 07/09/2021 and 24/09/2021 there was no appearance from either side, it is equally clear that until then, the complainant had taken steps to secure the presence of the accused and had demonstrated an intention to prosecute the case. In such circumstances, where absence occurs only on a couple of dates and there exists no pattern of neglect or undue

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delay, the learned Magistrate was expected to exercise discretion judiciously before invoking Section 256 CrPC to dismiss the complaint and acquit the accused. Moreover, the order of dismissal does not indicate that any prior notice was issued to the complainant or that the Court had explored alternative measures before terminating the proceedings. A litigant should not be penalized with finality for a procedural lapse without affording a fair opportunity, particularly in complaints under the Negotiable Instruments Act, which are summary in nature but entail consequences of acquittal. In such a context, the approach adopted by the learned Magistrate appears to be unduly rigid and warrants interference.

11. The absence on a solitary occasion, or even on few occasions, by itself, would not constitute sufficient ground to dismiss the complaint for non-prosecution and consequently acquit the accused. Such a view, if sustained, would result in miscarriage of justice and defeat the object of Section 138 of

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the Negotiable Instruments Act.

12. 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

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stated above, I deem it appropriate to allow the appeal. Hence, the following order:-

ORDER

(i) The Appeal is **allowed**.

(ii) The impugned orders passed by the learned Judicial Magistrate First Class, (Court No.2), Akola, in Summary Criminal Case Nos.5693/2019, 5694/2019 and 5695/2019 dated 24/09/2021, dismissing the said complaint 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, are quashed and set aside.

(iii) Summary Criminal Case Nos.5693/2019, 5694/2019 and 5695/2019 dated 24/09/2021,

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stands restored to file at its original stage and the matters are remanded back to the learned Trial Court to decide the same afresh, on its own merits.

(iv) The parties are directed to remain present before the Learned Trial Court on 24/11/2025.

(v) 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.

(vi) The above order is subject to payment of costs of Rs.10,000/- in each appeal. The cost shall be deposited by the appellant in the Trial Court. The said cost shall be paid to the respondent.

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(vii) The appeal is disposed of, accordingly.

[**M. M. NERLIKAR, J**]