



Judgment

Cr.APPA-1036-2024

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

CRIMINAL APPLICATION [APPA] NO. 1036 OF 2024
IN
CRIMINAL APPEAL [STAMP] NO. 8713 OF 2024

...

Tushar s/o Santosh Goenka,
Aged about 45 years, Occ. Business,
Proprietor of Neha Pulses,
Goenka House, Near Jain Mandir,
Besides S.P. Office, Akola,
Tq. & Dist. Akola.

... **APPELLANT**

- - V E R S U S - -

Rahul s/o Jayantilal Mehta,
Aged about 45 years, Occ. Business,
Proprietor of Paras Dal Mill,
Plot No. 135, MIDC Phase-IV,
Besides Om Dal Mill, Akola,
Growth Center, MIDC Akola,
Tq. & Dist. Akola, P.S. MIDC, Akola.

Second Address:
Dwarka Nagri, Toshniwal Layout,
Doodh Dairy Road, Akola,
Tq. & Dist. Akola.

... **RESPONDENT**

Mr. A.G. Lohia, Advocate for the Appellant.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 16, 2025.

ORAL 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 application is being filed seeking leave to file an appeal against the order dated 11/06/2024 passed below Exh.1 by the learned 5th Additional Chief Judicial

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Magistrate, Akola, in Summary Criminal Case No.1045/2019.

The appellant further prays for quashing and setting aside of the said order, 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 business under the name and style of Neha Pulses, while the respondent conducts business under the name Paras Dall Mill, Akola. On 08/03/2018, the respondent purchased goods on credit from the appellant amounting to Rs.4,58,067/-. In discharge of the said liability, the respondent issued a cheque bearing No.300610 dated 15/01/2019, drawn on Akola Urban Co-operative Bank Ltd., Akola Branch, for the amount of Rs.4,58,067/-. The cheque was presented for encashment on the same date, but was returned unpaid with the endorsement "Funds Insufficient" as per the bank return memo dated

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16/01/2019. A legal notice dated 24/01/2019 was issued by the appellant to the respondent under Section 138 of the Negotiable Instruments Act, 1881. The notice was served, but no reply or payment was made within the statutory period. Thereafter, a complaint under Section 138 of the Negotiable Instruments Act was filed before the Chief Judicial Magistrate, Akola, and registered as S.C.C. No. 1045/2019. The Trial Court issued process against the respondent on 21/05/2019. The matter was later posted for the complainant's evidence. On 11/06/2024, due to the absence of the complainant, the Trial Court dismissed the complaint under Section 256 of the Code of Criminal Procedure and acquitted the respondent. The present appeal has been filed challenging the said order.

6. It is noted that the complaint came to be dismissed by the Trial Court on 11/06/2024 under Section 256 of the Code of Criminal Procedure on the ground of non-appearance of the complainant and failure to tender evidence despite sufficient

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opportunities being granted. The matter was fixed specifically for complainant's evidence, and the order records that even after 5:00 p.m., no one appeared on behalf of the complainant. The Court took note of earlier orders passed on 02/03/2024 and 04/04/2024, whereby the matter had already been posted for dismissal in the event of further default. On that basis, the learned Magistrate proceeded to dismiss the complaint and acquit the accused.

7. It is noted that the complaint was dismissed by the Trial Court on 11/06/2024 under Section 256 of the Code of Criminal Procedure on the ground of non-appearance and want of prosecution. The order was preceded by earlier listings on the *roznama* dated 02/03/2024, 16/03/2024, and 04/04/2024, on which dates either the complainant or his counsel remained absent, and no steps or applications were filed. However, the *roznama* shows that on 19/04/2024, counsel for the complainant appeared and sought time to file the evidence,

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which was allowed by the Court. Despite this, on the next date, i.e., on 11/06/2024, both the complainant and his counsel remained absent, leading to dismissal of the complaint. While the record reflects certain lapses in appearance, it also shows that efforts were made to proceed with the matter, including the filing of an application for time and an indication of intent to tender evidence. In such circumstances, the Trial Court was expected to consider the overall conduct of the complainant, including prior participation and the nature of the defaults. A dismissal at the stage of evidence, without examining whether the absence was wilful or caused prejudice to the accused, and without affording one final opportunity in light of the complainant's earlier participation, may not be in consonance with the settled principles of procedural fairness.

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.

10. It is apparent that the complaint had advanced to the

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stage of evidence, and certain steps had already been taken by the complainant to prosecute the matter. Although the Trial Court recorded the absence of the complainant or his counsel on multiple dates prior to dismissal, the *roznama* also show that on 19/04/2024, counsel for the complainant appeared and sought time to tender evidence, which was permitted by the Court. This indicates that there was no indifference or abandonment of the proceedings. The dismissal on 11/06/2024, under Section 256 of the Code of Criminal Procedure, was passed solely on account of non-appearance on that date, without reference to the overall conduct of the complainant or the circumstances that led to the default. The *roznama* further reflects that on several earlier occasions, including 02/03/2024, 16/03/2024, and 04/04/2024, though the complainant had remained absent, no adverse orders were passed and the matter was simply posted for dismissal. In such a context, where there is no material to indicate wilful negligence or abuse of process, the Trial Court was expected to

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adopt a more cautious approach before terminating the proceedings. The absence of any assessment of prejudice caused to the accused or of the complainant's prior participation may render the order of dismissal inconsistent with the settled standards of procedural fairness.

11. The absence of the complainant on a single occasion, particularly when the matter had progressed to the stage of evidence and prior steps had been taken to pursue the complaint, ought not to have been treated as a sufficient ground to dismiss the proceedings for want of prosecution. The record does not indicate any consistent pattern of default or lack of diligence on the part of the complainant, nor is there any material to suggest that he had abandoned the prosecution. In such circumstances, the decision to dismiss the complaint and acquit the accused, without a contextual assessment of the complainant's overall conduct or affording a reasonable opportunity to lead the evidence, may defeat the object and

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purpose underlying Section 138 of the Negotiable Instruments Act. A strictly technical or rigid approach, particularly in the face of substantial compliance, risks frustrating the course of justice rather than advancing it.

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

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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:-

ORDER

- (i) The Appeal is **allowed**.
- (ii) The impugned order passed by the learned 5th Additional Chief Judicial Magistrate, Akola, in Summary Criminal Case No.1045/2019, dated 11/06/2024, 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, is quashed and set aside.

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(iii) Summary Criminal Case No.1045/2019, stands restored to file at its original stage and the matter is 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/-. 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**]