



Judgment

Cr.APPA-1169-2024

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

CRIMINAL APPLICATION [APPA] NO. 1169 OF 2024

IN

CRIMINAL APPEAL [STAMP] NO. 9546 OF 2024

...

M/s. Sahgal Tractors,
Through its Proprietor,
Pankaj Premchand Sahgal,
Aged 44 years, Occupation: Business,
R/o Near Fire Brigade Office,
Z.P. Road Akola, Tah. & Distt. Akola,
Police Station - City Kotwali, Akola.

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APPELLANT

- - V E R S U S - -

Ravindra S/o Gopal Damodar,
Aged 37 Years, Occupation: Business,
R/o Wangargaon, Post Ukali Bazar,
Taluka Telhara, District Akola,
Police Station Telhara Gramin.

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RESPONDENT

Mr. Nitin Laxminarayan Jaiswal, 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 01/04/2024 passed below Exh.1, by the learned Additional Chief Judicial Magistrate, (Court No.2), Akola, in Summary Criminal Case No.2472/2017. The appellant further prays for quashing and setting aside of the said order, wherein, the learned Magistrate

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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 a dealer of Preet Tractors carrying on a business under the name “Sahgal Tractors”. The respondent/accused purchased a tractor from the appellant on 13/01/2017 for Rs.6,50,000/-. Towards the margin money, the respondent issued a cheque bearing No. 878115, dated 13/05/2017, for Rs.98,000/-, drawn on The Akola Janata Commercial Co-operative Bank Ltd., Akola. The cheque, issued towards a lawful liability, was dishonoured upon presentation through the Corporation Bank, Akola, with the endorsement “Funds Insufficient” on 13/05/2017. The appellant issued a statutory notice dated 06/06/2017, which the respondent refused to accept on 09/06/2017. As the payment was not made, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, registered as Summary

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Criminal Case No. 2472/2017 before the learned Chief Judicial Magistrate, Akola. After the verification, summons were issued, and the accused-respondent appeared. The appellant filed his evidence on affidavit, and examination-in-chief was recorded on 21/08/2023. The matter was adjourned for the cross-examination, during which the accused failed to appear, resulting in an order of “no cross.” On an application by the accused, the said order was set aside upon payment of Rs.2,000/-. Subsequently, due to an inadvertent error by the complainant’s advocate in noting dates, the matter remained unattended on several occasions. On 01/04/2024, the learned Magistrate dismissed the complaint under Section 256 of the Code of Criminal Procedure, 1973, thereby acquitting the accused. Aggrieved by the said order, the appellant has preferred the present appeal.

6. From the record, it appears that the complaint was dismissed by the learned Magistrate on 01/04/2024 for want of

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prosecution. The appellant submits that such dismissal has caused serious prejudice, as the absence on the said date was not deliberate but due to a bona fide mistake on the part of the advocate. It is pointed out that the examination-in-chief of the complainant was completed on 21/08/2023, and thereafter, the complainant was regularly present before the Court on 10/10/2023, 30/10/2023, and 20/11/2023, which is evident from the entries in the *roznama*. On 10/11/2023, an application filed by the accused for setting aside the “no cross” order was allowed on payment of costs, and the matter was adjourned to 30/11/2023. The learned counsel for the appellant contends that on 30/11/2023, due to an inadvertent mistake in noting the next date, the complainant and his counsel could not remain present on subsequent dates, namely 18/12/2023, 10/01/2024, and 30/01/2024. It is further submitted that on 12/02/2024 and 11/03/2024, the Presiding Officer was on leave, and therefore, the matter could not have been proceeded on those dates. However, on 01/04/2024, both

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the counsel and the complainant remained absent, and the learned Magistrate proceeded to dismiss the complaint under Section 256 of the Code of Criminal Procedure, 1973, resulting in the acquittal of the accused. The appellant submits that the learned Trial Court failed to consider that the complainant had been diligent in prosecuting the matter and that the absence on a single occasion should not have led to the dismissal, particularly when the matter was otherwise pending for a considerable time and was not decided on merits.

7. 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

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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.”

8. 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.

9. It is evident from the record that the appellant had been regularly attending the proceedings after recording of his examination-in-chief on 21/08/2023, and the matter was adjourned on multiple occasions for the cross-examination. The *roznama* reflects that the complainant and his counsel were

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present on almost all listed dates, while the accused or his counsel often remained absent. It also appears that, on certain occasions, the matter could not be proceeded as the Presiding Officer was on leave. Despite such circumstances, the learned Magistrate dismissed the complaint on 01/04/2024 under Section 256 of the Code of Criminal Procedure, 1973. In these circumstances, the learned Trial Court was expected to adopt a more cautious and considerate approach, particularly when the record showed the complainant's consistent participation in earlier hearings. Before passing an order of dismissal, it was necessary for the Court to verify about the complainant's previous attendance and ascertain whether his absence on that single date was due to any deliberate lapse or a *bona fide* mistake.

10. 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

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acquit the accused. Such a view, if sustained, would result in miscarriage of justice and defeat the object of Section 138 of the Negotiable Instruments Act.

11. 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

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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 Additional Chief Judicial Magistrate, (Court No.2), Akola, in Summary Criminal Case No.2472/2017, dated 01/04/2024, 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.

(iii) Summary Criminal Case No.2472/2017,

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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**]