



Judgment

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

CRIMINAL APPLICATION [APPA] No. 898/2025.
(CRIMINAL APPEAL STAMP NO.4290/2025.)

State Bank of India,
through its Chief Manager,
RACPC Branch, Kingsway,
Nagpur.

... **APPLICANT.**

VERSUS

Jayesh Raghunath Guldekar,
Aged about Major, resident of
Food Corporation of India,
Old Complex, Building Unit No.3,
Ajani, Nagpur.

... **NON-APPLICANT.**

Mr. B. Mohata, Advocate for the Applicant/Appellant.
Ms H.D. Jamgade, Advocate for the Non-applicant.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 08, 2025.

ORAL JUDGMENT :

Heard. Leave granted.

Admit.

Rgd.

By consent of learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The learned Counsel for the appellant submits that the complaint filed by the appellant came to be dismissed for want of prosecution under Section 256 of the Code of Criminal Procedure, vide order below Exh.1 dated 29.04.2025, resulting into acquittal of the non-applicant/respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. He further submits that admittedly the case was instituted in the year 2020, however, due to Covid, the appellant could not pursue the complaint. On 28.02.2025, the complainant was present, however, its Advocate was absent. The matter was kept on 29.04.2025, and on that date, the complainant so also the Advocate was absent, and therefore, submit that merely complainant or its Advocate being absent on few occasions by itself is no ground for dismissal of the complaint under Section 256 of the Code.

3. On the other hand the learned Counsel appearing for the

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respondent/accused submits that the cheque is for Rs.19,000/-. She vehemently opposes the appeal and submits that the statutory period provided under Section 138 to decide the matter within a stipulated period, would be frustrated if such complaints are entertained. Perusal of the roznama would reveal that the complainant is continuously absent and therefore, no leniency can be shown. She further invited my attention to the roznama which shows that on several dates the complainant was absent. Considering the above facts, she submits that the appellant does not deserves any leniency and it is his own creation, therefore, appeal be dismissed.

4. Upon hearing the learned Counsel for the parties, it appears that admittedly the case was instituted in the year 2020. The order is passed in the year 2025. On perusal of the roznama it appears that on several occasions the complainant/appellant was present. However, on several occasions, the complainant was also absent. It further appears that on some dates the matter was transferred from one Court to another. It also appears that on one or two occasions, the Court was vacant. It is necessary to mention here that before passing of the

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dismissal order by the trial Court on 29.04.2025, the complainant was present on previous date i.e. 28.02.2025 and its Advocate was absent. Admittedly on next date i.e. on 29.04.2025, both the complainant as well as its Advocate, as also the accused and his Advocate were absent. Considering the above facts and circumstances of the case, in my opinion it is necessary to crystallize the rights of the parties on the basis of merits. It appears that the Court below has taken a hyper technical view while dismissing the complaint. No doubt, if the complainant is not cooperating with the trial Court, in that case one can understand if the complaint is dismissed for want of prosecution. However, it appears from roznama that on several occasions, the complainant was present.

5. The learned counsel for the appellant relied on the judgment of this Court in the case of **Shaikh Akbar Talab .vrs. 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.”

Upon perusal of the record and in light of the law laid down by this Court in the case of 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.

6. Considering the above facts and circumstances, the order impugned is liable to be quashed and set aside and the matter is required to be restored to its original position for its disposal in accordance with law. The appellant is ready and willing to lead evidence in next week i.e. on 22.12.2025, failing which the Court below may pass appropriate orders. However, this order shall be

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subject to payment of costs of Rs.10,000/- to the respondent by the appellant. The costs be deposited with the trial Court and after its deposit the respondent will be at liberty to withdraw the same. In view of above, the following order is passed.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The order dated 29.04.2025 passed by the 10th Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Nagpur in Summary Criminal Case No.,10851/2020 is hereby quashed and set aside.
- (iii) The matter is restored back to the file of 10th Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Nagpur, for its disposal in accordance with law.
- (iv) This order is subject to payment of costs of Rs.10,000/- by the appellant, which the appellant shall deposit with the trial Court within next 10 working days. If the costs are not deposited within the stipulated time the court below may pass appropriate order. If the costs are deposited, the respondent is at liberty to withdraw the same.

JUDGE