



Judgment

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

CRIMINAL APPEAL NO. 539 OF 2025.

Sunanda w/o Narendra Bhala,
through Power of Attorney,
Narendra s/o Radhakisan Bhala,
Age 63, Occupation – Business,
resident of c/o. Shailesh Udyog,
Plot No.F-3, MIDC II, Tahsil
District Akola.

... APPELLANT.

VERSUS

Mohanlal s/o Chaganlal Rathi,
Prop. Of Rathi Agencies,
Sahakar Nagar, Gaurakshan Road,
Tahsil, District Akola.

... RESPONDENT.

Mr. M.M. Maheshwari, Advocate for the Appellant.
None for the Respondent – Served.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 12, 2025.

Rgd.

ORAL JUDGMENT :

The appellant has filed this appeal challenging the order passed below Exh.1 and 19 in S.C.C.No.3683/2022 by the Judicial Magistrate First Class, Court No.5, Akola, whereby the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act came to be dismissed for want of prosecution, resulting into acquittal of the accused/respondent under Section 256 of the Code of Criminal Procedure.

2. I have heard the learned Counsel for the Appellant. Though served, there is no appearance from the side of respondent.

The learned Counsel for the appellant submits that the trial Court has committed an error in dismissing the complaint of the appellant on the ground that though an application was filed at Exh.19 seeking adjournment, however, no satisfactory reason is put forth by the complainant. He submits that multiple First Information Reports are lodged against the complainant, and she was apprehending her arrest, therefore, she was unable to appear before
Rgd.

the Court. He further assures this Court that the appellant would immediately be available for cross-examination, if one opportunity is granted. He therefore, prays that the impugned order passed below Exhs.1 and 19 be quashed and set aside.

3. It appears from the record that admittedly the case was instituted in the year 2022. The complainant has filed her affidavit of examination-in-chief and the matter was kept for cross-examination, but, cross-examination could not be conducted since 06.02.2023. Admittedly it appears that there are multiple first information reports lodged against the appellant, and therefore, she was apprehending her arrest. Further it also appears that she has filed an application for anticipatory bail before the Competent Court. No doubt the matter was adjourned on 06.06.2023 and 21.06.2023 for cross-examination, as, the complainant was absent.

4. It is a matter of record that on 01.07.2023, an application for adjournment was filed on behalf of the complainant by her Advocate. It was allowed subject to payment of costs of Rs.1000/-. It

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is further a matter of record that due to multiple first information reports, she was apprehending her arrest and therefore, she was not attending the Court proceedings. Again an application at Exh.19 was filed for adjournment, however, that application was not considered and ultimately order dated 09.08.2023 was passed dismissing the complaint for non appearance of the complainant and acquitting the accused accordingly.

5. As can be gathered from the record that the complainant has promptly filed an application for examination-in-chief. As stated above there are multiple first information reports registered against the appellant, and that her Advocate has filed applications for adjournment from time to time. Admittedly the matter was kept for cross-examination. In such circumstances, the Court ought to have considered the application of the complainant for adjournment, as the circumstances were beyond the control of the complainant. It can be further gathered that the trial Court has in detail passed the order, however, it ought not have taken a hyper technical view while

dismissing the complaint for non-appearance. Ultimately rights of the parties are required to be crystallized on the basis of merits of the matter. Procedural aspects cannot thwart the course of substantial justice.

6. The learned Counsel for the appellant has placed reliance on the judgment of this Court in the case of **Shaikh Akbar Talab .vrs. A.G. Pushpakaran & Another** (2018 ALL MR (Cri) 1208), and refer 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.

7. Considering above facts and circumstances, and accepting the statement made by the learned counsel for the appellant that the appellant will immediately be available for cross-examination, I am inclined to grant the relief to the appellant, by quashing and setting aside the impugned order. However, this order shall be 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 09.08.2023 passed by the Judicial Magistrate, First Class, Court no.5, Akola below Exhs.1 and 19 in S.C.C.No.3683/2022, is hereby quashed and

Rgd.

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set aside.

- (iii) The matter is restored back to the file of Judicial Magistrate, First Class, Court No.5, Akola 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 7 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