



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

CRIMINAL APPLICATION [APPA] No. 1261/2023
AND CRIMINAL APPEAL ST.NO.9697/2023.

Mahadeo s/o wasudeorao Bandhekar,
Aged about 49 years, Occupation
Moneylender, resident of Tandapeth,
Nagpur.

... APPLICANT.

VERSUS

Smt.Rekhabai Prakashrao Tambe,
Aged about 60 years, Occupation
Retired, resident of Plot no.35,
Maharashi Kalidas Apartment,
Bannerjee Layout, Nagpur.

... NON-APPLICANT.

Mr. C.F. Bhagwani, Advocate for the Applicant.
None for the Non-applicant – Served.

CORAM : M.M. NERLIKAR, J.
DATE : SEPTEMBER 30, 2025.

ORAL JUDGMENT.

Heard learned Counsel for the applicant/appellant. Though

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served, the non-applicant has chosen not to appear.

2. The present application is being filed seeking leave to file appeal against the order dated 01.09.2023 passed below Exh.1 by the learned 10th Joint Civil Judge Senior Division and A.C.J.M. Nagpur in Summary Criminal Case No.14151/2019, whereby the complaint filed by the applicant/appellant under Section 138 of the Negotiable Instruments Act came to be dismissed for want of taking steps, resulting into acquittal of the non-applicant/accused.

3. Brief facts of the case are that the applicant/appellant is dealing in the business of money lending and he possess a licence. That on 05.08.2010 the non-applicant had approached him for a hand loan of Rs.20,000/-, which the applicant advanced to her and the same was acknowledged by executing a promissory note. The promissory note contains a clause of interest @ Rs.1.50 p.c.p.a. On 03.09.2012 on demand, the applicant had advanced Rs.20,000/- to the non-applicant towards hand loan by undertaking the above procedure. Again on 05.09.2012 the non-applicant approached the applicant/appellant for

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hand loan of Rs.20,000/- which was granted by completing the aforementioned formalities. Towards repayment of the outstanding loan, the non-applicant had issued a cheque on 10.04.2019 amounting to Rs.1,15,000/- in favour of the applicant/appellant, who in turn placed the same with his Banker – Punjab National Bank, Itwari Branch, Nagpur for clearance, however he received a memo of dishonor of cheque on 15.04.2019 with endorsement 'kindly contact drawer/drawee bank' which according to the applicant/appellant shows there was insufficient funds in the account of the non-applicant. A demand notice was issued by the applicant on 18.04.2019 and thereafter, on 30.05.2019, the applicant/appellant lodged proceedings under Section 138 of the NI Act which was registered as SCC No.14515/2019. In this proceeding the learned trial Court on 01.09.2023 passed an order below Exh.1 dismissing the complaint for want of steps and acquitted the accused. It is this order which is subject matter of challenge in this petition.

4. The learned counsel for the applicant/appellant submits that the order dated 01.09.2023 ought not to have been passed by the learned Magistrate, as the matter was regularly prosecuted and his

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Advocate was attending the Court. He further submits that the matter is pending for awaiting summons and attendance of complainant at this stage is not necessary. It is further submitted that the matter was never placed for taking any steps. He further submits that he is ready and willing to prosecute the matter further by taking necessary steps.

5. Though served, the non-applicant has chosen not to appear in the matter. Perusal of roznama reveals that on certain occasion, the counsel for the applicant was present. It is also revealed that the matter was pending for awaiting summons. The learned trial Court has on 03.08.2023 recorded that “*steps for taken since long Matter kept for dismissal order*” and on the next date i.e. 01.09.2023, recorded that “*steps not taken since long. Order passed below exh.1 Matter dismissed for want of steps. Accused is acquitted. DISPOSED OF OTHERWISE. Proceeding is closed.*”

6. I have perused the order and gone through the record. It seems from the impugned order was passed below Exh-1 on 01.09.2023, when the matter was kept for dismissal, since steps were not taken.

Rgd.

However, on this date the complainant and his advocate were absent. It is also reflected in the roznama that on 03.08.2023 also the complainant and his Advocate were absent. No doubt, the applicant/appellant was absent on several occasions, and the Court below was pleased to dismiss the complaint for not taking steps, as a result of which the accused was acquitted under Section 256 of the Criminal Procedure Code. Needless to mention at this juncture that it is true that the applicant/appellant has not given any reason to demonstrates his absence, however, to meet the ends of justice and as was submitted by the learned counsel for the applicant/appellant that he is ready and willing to prosecute the matter, I am inclined to consider the prayer made by him.

7. It would be useful to refer to the case of **Shri Shaikh Akbar Talab .vrs. Shri A.G. Pushpakaran & Another, - 2018 ALL MR (Cri) 1208**, wherein, it was 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 are 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 stated above, I hereby grant leave to file appeal. Office is directed to register the appeal, and by this order the said appeal is allowed in the following manner.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The impugned order passed by the learned 10th Joint Civil Judge, Senior Division and ACJM, Nagpur below Exh.1 in Summary Case No.14515/2019 dated 01.09.2023, dismissing the complaint of the appellant 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. The said proceedings are restored back to file for its adjudication on merits.
- (iii) The appellant / complainant shall appear before the

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Trial Court on 06.10.2025 and take necessary steps within further period of two weeks thereafter.

- (iv) 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.
- (v) The above order is subject to payment of cost of Rs.5,000/-. The cost shall be deposited by the appellant with the District Legal Services Sub Committee, Nagpur.

JUDGE