



Judgment

Cr.APPA-1244-2024

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

CRIMINAL APPLICATION [APPA] NO. 1244 OF 2024

IN

CRIMINAL APPEAL [STAMP] NO. 9407 OF 2024

...

Shri. Ankush S/o. Kisanrao Aglawe,
Aged about 50 years, Occ. Service,
R/o. Ashwini Palace, Dwarka Nagar,
Behind Saint Anney School, Anandwan Square,
Warora, Tah. Warora, Dist. Chandrapur.

... **APPELLANT**

- - V E R S U S - -

Shri. Sanyam Sanjay Danekar
Aged 50 yrs., Occ.- Business,
R/o. WCL Colony, Shakti Nagar,
Q. No. M-222, Chandrapur,
Tah. & Dist. Chandrapur.

... **RESPONDENT**

Mr. R.Bhishikar, Advocate for the Appellant.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 09, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the appellant.

2. Admit.

3. The present application is being filed seeking leave to file appeal against the order dated 21/09/2023 passed below Exh.1 by the learned Additional Chief Judicial Magistrate, Warora, Chandrapur, in S.C.C. No.636/2020. The appellant 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.

4. Brief facts of the case are that:

The present appeal arises from a complaint filed by the Appellant (Complainant) against the Respondent (Accused) under Section 138 of the Negotiable Instruments Act. The

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dispute centers around an agreement wherein the Complainant paid Rs. 4,00,000/- to the Accused for the installation of solar energy panels at the Complainant's residence in Warora, District Chandrapur. Despite the payment for the same, the accused failed to carry out the work, prompting the complainant to seek a refund. The accused issued a cheque amounting to Rs. 1,00,000/- on 31/01/2020, which was dishonored due to insufficient funds. Following the dishonor of the cheque, the Complainant filed a complaint under Section 138 of the Negotiable Instruments Act, which was registered as S.C.C. No. 636/2020 before the Learned Additional Chief Judicial Magistrate, Warora. The accused pleaded not guilty.

5. On 17/05/2023, the Complainant testified and completed his examination-in-chief. However, the cross-examination could not be conducted due to absence of the Accused. The case was subsequently adjourned. Despite the Complainant's regular attendance, the Accused remained absent

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on several occasions, prompting the Trial Court to issue a non-bailable warrant on 06/07/2023. On 31/08/2023, the Complainant closed his evidence by filing a Pursis at Exh.-35. The Accused filed an application (Exh.-36) on same date seeking permission to cross-examine the complainant and the case was referred to Lok Adalat on 09/09/2023, but no settlement was reached, and so the matter was listed for hearing on 21/09/2023. But on 21/09/2023, the Complainant and his counsel could not attend the hearing. The Complainant was out of station, and the counsel, Adv. Amol Vaidya, who is a diabetic and heart patient, was unwell, and therefore, unable to attend on the said date. As a result, the Trial Court dismissed the complaint for want of prosecution under Section 256 of the Code of Criminal Procedure, observing that no one appeared when the case was called. The Trial Court also noted that the matter was pending for the Complainant's further evidence and the filing of his say on the application at Exh.-36. On 21/09/2023, the Additional Chief Judicial Magistrate, Warora,

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Chandrapur, passed the following order :-

“1. Complaint is disposed of for want of prosecution and steps not taken by complainant U/s.256 of Code of Criminal Procedure.

2. Accused is acquitted from the offence punishable under section 138 of Negotiable Instrument Act.

3. Bail bonds of accused stand canceled. (if any).

4. Proceeding is closed.”

6. The Appellant has approached this Court, contending that the dismissal was unwarranted given the valid reasons for non-appearance on 21/09/2023. It was submitted that despite the appellant's regular appearance on various dates, the impugned order has failed to take into consideration the said fact. He further submits that the appellant had closed his evidence by filing a Pursis on 31/08/2023. Additionally, the matter was referred to Lok Adalat for an amicable settlement, which, however, could not be reached. The counsel for the appellant also submits that on 09/09/2023, the appellant's

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counsel was present, and the matter was adjourned to 21/09/2023. However, on that date, an abrupt order under Section 256 of the Code of Criminal Procedure was passed, acquitting the accused of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Furthermore, despite service of notice, the respondent failed to appear, and even after the matter was adjourned by two weeks, no one appeared for the respondent on the last date of hearing.

7. I have perused the impugned order as well as the record placed before me. It appears that on 17/05/2023, several documents were taken on record in support of the claim of the appellant. Thereafter, on 17/06/2023, the appellant was present but his counsel remained absent. Again, on 21/06/2023, both the appellant and his counsel remained absent. However, on 26/06/2023, the counsel for the appellant was present, though the Presiding Officer was on leave, and hence the matter was adjourned. It further appears that on

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06/07/2023, the appellant and his counsel were present, whereas the accused and his counsel were absent. Accordingly, a bailable warrant was issued against the accused vide Exh.-33. On 03/08/2023, both the appellant and his counsel, as well as the accused, remained absent. The warrant issued earlier had not been served and was returned with a request for extension of time. Importantly, on 31/08/2023, the counsel for the appellant was present and filed a Pursis stating that the evidence of the complainant stood closed. On the same day, the accused and his counsel were also present, and the matter was accordingly referred to the Lok Adalat to explore the possibility of settlement. On 09/09/2023, it appears that no settlement could be arrived at in the Lok Adalat, and therefore, the appellant himself was not present, however, his counsel attended the proceedings. The accused and his counsel were also present on that date. On 21/09/2023, both the appellant and his counsel remained absent. It further appears from the *roznama* that no steps were taken by the appellant on that day.

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Consequently, the Learned Trial Court dismissed the complaint for non-prosecution and acquitted the accused under Section 256 of the Code of Criminal Procedure.

8. Leave is granted to the appellant to prefer the appeal.

9. **Admit.** Office to register the appeal. The matter is taken up for final hearing.

10. 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.”

11. Upon perusal of the record it reveals that the learned Chief Judicial Magistrate has erred in taking the view that the say has not been filed by the complainant, on contrary the say has been filed by the complainant on Exh.-36. 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. It is evident that the appellant had closed his evidence by filing a Pursis on 31/08/2023. Thereafter, the matter was referred to the Lok Adalat. As no settlement was arrived at, the matter was listed on 09/09/2023, however, on that day, the counsel for the appellant was present. It was only on 21/09/2023 that both

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the appellant and his counsel were absent. In such circumstances, the Learned Additional Chief Judicial Magistrate, Warora, District Chandrapur, ought to have adopted a liberal approach and granted a reasonable opportunity to the appellant, especially considering that the appellant and his counsel had diligently and sincerely attended the proceedings on multiple prior occasions.

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

13. 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

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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 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**.

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(ii) The impugned order passed by the Learned Additional Chief Judicial Magistrate, Warora, Chandrapur, in S.C.C. No.636/2020, dated 21/09/2023, 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) S.C.C. No. 636/2020, 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.

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(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.

(vii) The appeal is disposed of, accordingly.

[**M. M. NERLIKAR, J**]