



Judgment

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

CRIMINAL APPLICATION [APPA] No. 992/2025.
(CRIMINAL APPEAL STAMP NO. 7586/2025.)

Vinod s/o Mohan Harinkhede,
Aged about 51 years, Occupation
Service, resident of Tirora, Tahsil Tirora,
District Gondia. ... APPLICANT.

VERSUS

Ishwarlal s/o Dharmaji Pardhi,
Aged about 52 years, Occupation – Business,
Resident of c/o. Saghrame Sir, Vinoba Bhave
Nagar, infront of ITI, Tumsar, Tahsil Tumsar,
District Bhandara. ... NON-APPLICANT.

Mr. V.R. Borkar, Advocate for the Applicant/Appellant.
Mr. S.G. Karmarkar, Advocate the Non-applicant/Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : JANUARY 13, 2026.

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ORAL JUDGMENT :

Heard. Leave granted.

Admit.

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

2. The present appeal is preferred by the appellant against the order dated 08.06.2023 passed by the Chief Judicial Magistrate, Gondia below Exh.1 in S.C.C.No.2007/2017 and order passed by the Sessions Judge, Gondia on 17.02.2025 in Criminal Revision No.35/2023. The complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, came to be dismissed in view of Section 256 of the Code of Criminal Procedure, and the respondent/accused is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act on the ground that though the case was adjourned from time to time, for one or the other reason and that the complainant could not be cross-examined. Against which Criminal Revision was preferred by the appellant, which came to be

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dismissed, being an appeal against acquittal, as not maintainable. Hence, this appeal.

3. The learned Counsel appearing for the appellant submits that the Court below ought not to have dismissed the complaint under Section 256, and ought not to have acquitted the accused for the reason that the case was adjourned for one or the other reason, which could be gathered from the roznama on record with this appeal. He further submits that on 02.01.2023, though the complainant was absent, his Advocate was present. On that date certain documents were filed, and those documents were exhibited. On next date i.e. on 14.02.2023, the Advocate for complainant was present, however, the accused and his Advocate were absent, and accordingly the matter was posted for cross-examination of the complainant. Though the matter was kept on 02.03.2023 and on that date though the complainant was absent, his Advocate was present. On that date again certain documents were exhibited. The matter was kept again for cross-examination of the complainant, and the matter was adjourned to 21.03.2023, on which date also the complainant was absent, however,

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his Advocate was present, but, the Advocate for the accused was absent, and therefore, again the matter came to be adjourned to 25.04.2023. On 25.04.2023, the complainant was absent and his Advocate was present. On that date another Advocate appeared on behalf of the accused, and sought time for cross-examination and accordingly the matter was adjourned to 29.05.2023. On 29.05.2023, an application came to be moved by the Advocate for the complainant for grant of adjournment. The matter was adjourned to 08.06.2023, subject to payment of costs of Rs.500/-. Again on 08.06.2023, the complainant as well as his Advocate, so also the accused and his Advocate were also absent. Impugned order came to be passed on the said date.

4. The learned Counsel for the appellant submits that the Trial Court ought not to have passed the impugned order and could have considered the case on merits. He further submits that he is ready and willing for cross-examination. He further submits that due to one or the other reason, the matter came to be adjourned, and therefore, absenteeism of the appellant is not deliberate or willful. He

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submits that the trial Court ought to have considered the case on merits by giving an opportunity to the appellant, as he has already filed affidavit of examination-in-chief. Lastly, it is submitted that he is ready and willing to comply with the order dated 29.05.2023, passed at Exh.49, wherein costs of Rs.500/- came to be imposed. He further submits that one opportunity may be granted so that the matter can be decided on merits.

5. On the other hand, the learned Counsel appearing for the non-applicant/respondent, by filing reply submits that the Court below has rightly passed the impugned order dismissing the complaint of complainant. Infact several opportunities were granted, still the complainant/ appellant was not available for cross-examination. He further submits that the learned Courts below have exercised their jurisdiction well within their domain. He submits that if the roznama is perused, it shows that the complainant was consistently absent and therefore, there was no alternative left with the trial Court, but, to dismiss the complaint of the complainant for want of prosecution. He further submits that even the order of costs imposed on the

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complainant, is not complied with by the appellant. He lastly submits that there is no merits in the appeal, and the same be dismissed.

6. Upon consideration of the rival submissions of the parties, it appears that admittedly the appellant has filed affidavit of examination-in-chief. The matter was posted for cross-examination of the complainant. It further appears that consistently the appellant/complainant had remained absent, however, it could be further gathered from the roznama that several documents were exhibited on few dates, as observed above. It would be further gathered from the roznama, that when the complaint was dismissed, on that date the complainant, as well as the accused and their Advocates were absent. Considering the above facts and circumstances, the Court ought to have granted one more opportunity to the appellant to make himself available for cross-examination, however, by taking a hyper-technical view, the Court below has dismissed the complaint of the appellant.

7. It will be useful to refer to the judgment of this Court in the case of **Shaikh Akbar Talab .vrs. A.G. Pushpakaran & Another**

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(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.”

8. No doubt the complainant/appellant was absent on various dates, however, as submitted by the learned Counsel for the appellant that one last opportunity be granted to the appellant. Considering above facts and circumstances, and accepting the statement made that the appellant would be available for cross-examination on the given date, 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.30,000/- to the respondent by the appellant. The costs be

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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 08.06.2023 passed by the Chief Judicial Magistrate, Gondia below Exh.1 in S.C.C. No.2007/2017 is hereby quashed and set aside.
- (iii) The matter is restored back to the file of Chief Judicial Magistrate, Gondia for its disposal in accordance with law. The appellant to appear before the trial Court on 03.02.2026.
- (iv) This order is subject to payment of costs of Rs.30,000/- by the appellant, which the appellant shall deposit with the trial Court before 03.02.2026. The appellant shall also comply with the order below Exh.49. If the costs are not deposited within the stipulated time, the court below may pass appropriate order. If the costs is deposited, the respondent is at liberty to withdraw the same.

JUDGE