

Bapu Bhimrao Toradmal Vs Ganesh Jalindar Shinde

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 16, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 256

Bhartiya Nagarik Suraksha Sanhita, 2023 " Section 279

Negotiable Instruments Act, 1881 " Section 138

Hon'ble Judges: Sanjay A. Deshmukh, J

Bench: Single Bench

Advocate: Vivek V. Tarde

Final Decision: Allowed

Judgement

Sanjay A. Deshmukh, J

1. Heard learned advocate for appellant.

2. This appeal is preferred by the original complainant against the order passed by the learned Judicial Magistrate First Class, Karjat, Dist.

Ahmednagar (hereinafter referred to as "the learned Trial Court") dated 13.02.2019 in S.C.C. No.289 of 2015 by which the respondent/accused

was acquitted under Section 256 of the Criminal Procedure Code, 1973, now Section 279 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short

"BNSS").

3. Brief facts of the case are as under :

The appellant filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "N.I. Act") on 28.07.2015. The summon

as well as bailable warrant were issued against accused/respondent, which were served to him. But he did not remain present before the learned Trial

Court. The report of service of bailable warrant was filed on record on 21.12.2018. The learned Trial Court has observed that no steps were taken

and the complainant was absent. The complainant has not taken any appropriate steps and no application was filed on record. The matter was four

years old. There was no need to keep the file pending on record and the complaint was dismissed for want of prosecution under Section 256 of the

Criminal Procedure Code, 1973 and respondent/accused was acquitted under Section 138 of N.I. Act.

4. Learned advocate for appellant pointed out the grounds of objections of the appeal and submitted that the impugned order is not legal. By the said

order the valuable rights of the appellant are affected and respondent/accused is illegally acquitted. In support of his submissions, he is relying upon the

precedental law of Shabu Bhimappa Dudhale Vs. Vinayak Appasaheb Padavle and Anr., 2023 ALL MR (Cri) 2726, in which it is held that, the

powers under Section 256 of the Criminal Procedure Code, 1973 shall not be exercised only for the purpose of disposing of cases. He therefore

submits to allow the appeal by setting aside the impugned order and by remanding the matter back for fresh hearing.

5. Following point emerged for consideration :-

(i) Is the impugned order is illegal and incorrect, and require interference ?

6. Perused the documents as well as grounds of objection of this appeal. The learned Trial Court had not observed in the impugned order as to

whether the advocate for the complainant is present or not after receiving the report of bailable warrant dated 21.12.2018. The impugned order was

passed within two and half months thereafter and sufficient opportunity was not given to the appellant to take steps. No doubt the matter had

completed four years however, it is not ground for passing such order and forfeit the valuable rights of the appellant to proceed against the

accused/respondent.

7. Considering the facts of the case, the grounds of objections, the argument submitted on behalf of appellant as well as law laid down in the case of

Shabu Bhimappa Dudhale (supra), it would be proper to set aside the impugned order and allow the appeal with direction to hear and decide the

complaint as expeditiously as possible in the interest of justice. It is because the complaint/case is pending for

more than nine years and this is an exceptional circumstance to direct it expeditiously by keeping it once in a week as per directions of the

Hon'ble Supreme Court held in the case of High Court Bar Association Allahabad Vs. State of Uttar Pradesh, (2024) 6 SCC 267. Therefore,

point No. (i) is answered in affirmative. Hence, the following order :

ORDER

(a) The impugned order is set aside.

(b) The complaint is restored to its original stage.

(c) The learned Judicial Magistrate First Class, Karjat, Dist. Ahmednagar is directed to decide the complaint as expeditiously as possible as per law

and in any event within one year from today by keeping it once in a week.

(d) The appellant to submit copy of this judgment before the concerned Court within two weeks from today.