

**Aqueel Ahmad Vs. Prashant and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/1104578](http://sooperkanoon.com/1104578)

**Court :** Mumbai Nagpur

**Decided On :** Jul-22-2013

**Judge :** P.D. Kode

**Appeal No. :** Criminal Application No.272 of 2013

**Appellant :** Aqueel Ahmad

**Respondent :** Prashant and Another

**Advocate for Pet/Ap. :** Mr. Qazi

**Judgement :**

Oral Judgment:

Rule. Rule returnable forthwith. Heard finally by consent of the parties.

2. Considering the short controversy involved in the matter i.e. dismissal of the complaint preferred by the applicant for an offence punishable under Section 138 of the Negotiable Instruments Act even prior to the issuance of process against the non applicants, it appears proper to decide this application even without issuing any notice to the non applicants. As no right can accrue in favour of the non applicants either due to the said dismissal or even otherwise for appearance as the complaint against them was not entertained by the trial Court.

3. The certified copy of roznama tendered by Mr. Qazi, learned counsel for the applicant is taken on record.

4. Mr. Qazi, learned counsel for the applicant, by inviting attention to the order impugned in the application, submitted that the order impugned reveals that the complaint presented by the applicant was dismissed on two counts i.e. firstly due to his absence before the Court and secondly no step being taken on his part for securing presence of the accused. It is submitted that the learned counsel for the applicant, having failed to note the date given in the said case for keeping the applicant present for verification had occasioned absence of the applicant before trial Court. It is submitted that thus the matter was dismissed for default not due to any intentional act on the part of the applicant and the same has occasioned due to the lapse on the part of the Advocate. It is submitted that cause should not be allowed to be defeated due to lapse on the part of his Advocate and furthermore when the same was not deliberate or intentional but only due to the inadvertence.

5. Mr. Qazi, learned counsel further submitted that the other reason given in the order is apparently unjust as without any verification statement of the applicant being recorded, he could not have taken any steps for securing the presence of the accused. It is submitted that the observations made in the order that specific order was passed for that purpose by the Court at Exh.-1, is de hors of substance as no such order is on record and the same is apparent from the certified copy of the Roznama produced before the Court.

6. Mr. Qazi, further submitted that even assuming that there was some fault on the part of the applicant in not remaining present before the Court but definitely it was not intentional. Still a fact cannot be lost sight of that the applicant has not received an opportunity to test merits of his case. It is submitted that as the complaint was presented regarding bouncing of a cheque for a good value of Rs.92,000/-, makes it difficult to perceive that the applicant would intentionally allow losing of such lis by negligence and this in turn indicates that the matter was dismissed due to the applicant being not informed regarding the date of keeping himself present before the court for recording his verification statement. It is, thus, urged that for serving the ends of justice, powers under Section 482 of the Cr.P.C.

be exercised and the impugned order be quashed and set aside on such terms and conditions as deemed proper, to afford an opportunity to the applicant to agitate his grievance before the court, in accordance with law.

7. The perusal of the certified copy tendered on record fortifies the submissions canvassed that no such order, as mentioned in the order impugned, was passed by the Court. There also appears substance in the contention advanced that no such litigation would have been allowed to lapse by remaining absent before the Court without any rhyme or reason. At any rate, after considering the matter stated in the Roznama of the case, apparently, there is nothing before the Court to come to the conclusion that the default occurred on the part of the applicant in attending the court was for any other reason than he himself being not informed about the date by his Advocate as contended.

8. In the premises aforesaid and considering the real purpose for which the powers under Section 482 of Cr.P.C. are to be exercised, the case is made out for exercising such powers. However, considering the conduct of the applicant, certain cost deserves to be saddled upon him.

9. Resultantly, Criminal Application No. 272/2013 is allowed. The order dated 14.09.2012 passed by 8th Jt. Judicial Magistrate First Class (Spl. 138 Court), Nagpur dismissing the Criminal Case No.8615/2012 for default, is hereby quashed and set aside subject to the applicant depositing Rs.750/- with High Court Legal Services Sub Committee, Nagpur. Upon such compliance being made, the complaint stands restored before the same Court. The applicant to appear before the said Court in connection with the said case on 07.08.2013.

Rule made absolute in the above terms.

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