



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

CRIMINAL WRIT PETITION NO.375 OF 2026

PETITIONER
(Original Complainant)

:- M/s Digesh Industries
through proprietor Smt. Heena Digesh
Khakkar, Aged about 54 years, Occ- Business,
Resident of 206, Shree Shivshakti Apartment,
Indiradevi Town, Wathoda, Nagpur.

..VERSUS..

RESPONDENT
(Original Complainant)

:- Vishwajeet Jagdish Wairagade,
proprietor of Adorn Marketing Aged: Major,
Occupation: Business, Resident of Shop No.1,
2, 3, 4 and 5, Rajat Plaza, Ghat Road, Nagpur
– 440013.

Mr. Meet K. Thakkar, Advocate for Petitioner.
Mr. S.S. Kukreja, Advocate for Respondent.

CORAM : **MEHROZ K. PATHAN, J.**

DATE : **18/08/2026**

JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith. Heard finally
with consent of learned counsel for the respective parties.

3. The petitioner challenges the order below Exh.1 dated 12.09.2023 passed by the learned 16th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur in Summary Criminal Case No.7131 of 2017, whereby the complaint filed by the petitioner came to be dismissed for want of prosecution on the ground that the matter was pending for verification and no steps have been taken in the matter since long and the complaint was kept pending for six years without any steps being taken by the complainant.

4. The learned counsel Mr. Thakkar submits that challenging the said order dated 12.09.2023, the petitioner has filed a revision application before the learned Additional Sessions Judge-14, Nagpur, being Criminal Revision Application No.330 of 2023. However, the learned Revisional Court also failed to appreciate that the personal verification in the presence of complainant was not at all required, as laid down by the Hon'ble Supreme Court in various judgments and has gone ahead to dismiss the revision only on the ground that on certain dates the applicant did not remain present.

5. The applicant is ready to show her bonafides by depositing a cost of Rs.50,000/- and further agrees to remain present on all the dates of hearing before the learned Magistrate and

to pursue her complaint diligently.

6. The learned counsel Mr. Thakkar further relied upon the judgment of the Hon'ble Supreme Court in the case of *A.C. Narayanan ..Vs.. State of Maharashtra and another*¹, particularly paragraph 29, wherein the Hon'ble Supreme Court has held that examination of the complainant or the witness is not necessary before issuing process on the complaint under Section 138 of the Negotiable Instruments Act, 1881. He, therefore, submits that both the learned Courts committed an error and material irregularity which calls for the interference of this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India Hence, the impugned order may be quashed and set aside.

7. On the other hand, Mr. Kukreja, learned counsel for the respondent strongly opposes the petition on the ground that the petitioner has failed to take appropriate steps for six long years. The complaint was filed in the year 2017 and for seven years, the petitioner herein has failed to appear before the learned Magistrate for verification of her complaint. The learned Trial Court therefore applied its mind to the conduct of the complainant and initially passed an order dated 21.12.2022 keeping the matter for dismissal, as it was found that the complainant had lost interest in prosecuting

¹ (2014) 11 SCC 790

the complaint. He relied upon the order dated 21.12.2022 to show that the final order dated 12.09.2023 was passed taking into consideration the number of dates on which the complainant has failed to appear or examine herself in support of her complaint. He further relied upon the order passed by the Revisional Court dated 16.12.2024, wherein the learned Revisional Court has taken into consideration the Roznama of the complaint and found that on several such occasions, despite of the directions from the Court, the complainant had remained absent.

8. Mr. Kukreja, learned counsel for the respondent, therefore submits that the order passed by the learned Magistrate dismissing the complaint for want of prosecution, as well as the judgment of the learned Additional Sessions Judge-12, Nagpur dated 16.12.2024 dismissing the revision, does not call for interference of this Court, as there are sound reasons given for the dismissal of the complaint. The impugned order is just and proper and therefore liable to be maintained. Hence, the petition is liable to be dismissed.

9. I have gone through the order dated 12.09.2023 passed by the 16th Joint Civil Judge Senior Division and A.C.J.M. Nagpur and I have also gone through the judgment dated 16.12.2024 passed

by the learned Additional Sessions Judge-12, Nagpur. The order passed by the learned Magistrate as well as Revisional Court shows that the verification of the complainant was found to be one of the mandatory steps for entertaining the complaint. Though the complainant was absent on several dates, however the presence of the complainant could have been ensured and the complaint could have been decided on merits or process could have been issued without examination of the complainant on oath.

10. The Hon'ble Supreme Court in the case of A.C. Narayanan (supra) has observed thus:-

*“29. From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. **For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act.** It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain*

present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.”

11. The aforesaid observation of the Hon’ble Supreme Court in the judgment of the **A.C. Narayanan** (supra) shows that it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act in each and every case. The process could have been thus issued even in the absence of the complainant.

12. The order dated 12.09.2023 does not show that any satisfaction was arrived at by the learned Magistrate nor any reasons are recorded for calling upon the complainant to remain present for examination. The process could have been issued under Section 200 of the Cr.P.C. relying upon verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act. Thus, in my opinion one opportunity needs to be given to the complainant particularly when the complainant has shown his bonafides by voluntarily making a statement of depositing an amount of Rs.50,000/- as costs to compensate the proposed accused respondent herein. Thus, a case is made out for

exercise of supervisory jurisdiction under Article 227 of the Constitution of India to set aside the impugned orders. Hence, I am inclined to pass the following order :-

ORDER

- i) Writ petition is **allowed**.
- ii) The order below Exh.1 dated 12.09.2023 passed by the learned 16th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate (Spl. Court for S.138 N.I. Act), Nagpur in Summary Criminal Case No.7131 of 2017 and judgment and order dated 16.12.2024 passed by the learned Additional Sessions Judge-12, Nagpur in Criminal Revision No.330 of 2023, are hereby quashed and set aside, subject to the condition of the petitioner depositing an amount of Rs.50,000/- before the learned trial Court within a period of three weeks from today.
- iii) The amount if so deposited shall be paid to the respondent herein through his counsel.
- iv) Upon deposit of such amount, the complaint shall be heard on its own merits and a fresh decision shall be taken by the learned Judicial Magistrate whether or not

to issue process against the accused on its own merits, without being influenced by any observations made by this Court in the present petition.

Rule is made absolute in above terms. No order as to costs.

(MEHROZ K. PATHAN, J.)

C.L. Dhakate