

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 901 OF 2015**  
**(DELAY)**

**AND**  
**CRIMINAL APPLICATION NO. 900 OF 2015**  
**(LEAVE TO FILE APPEAL)**

Rajendra S/o Rajaram Basaiye  
Age : 54 years, Occu.: Business,  
R/o Kesar Sadan  
Gulmandi, Tal Dist. Ahmednagar .. Applicant

Vs.

1] The State of Maharashtra

2] M/s Vikrant Developers  
Through its proprietor,  
Sanjay Bhagwan Patil  
Age – 50 years, Occu: Business,  
R/o. 1<sup>st</sup> Floor, Parasmani Bhavan,  
Lokmanya Tilak Chowk,  
Dombivali (East) 421 201 .. Respondents

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Mr. B.S. Chondhekar, Advocate for applicant in both  
applications  
Mrs. M.S. Patni, A.P.P. for respondent-State

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**CORAM : M.T. JOSHI, J.**  
**DATE : 25/08/2015**

**ORAL ORDER :**

Heard learned counsel for the applicant as well  
as the learned A.P.P.

2. Since the complaint was dismissed under section 203 of the Code of Criminal Procedure, without issuing any process to the complainant and due to the absence of the present appellant-applicant, there is no need to issue any notice to the respondent no.2.

3. For the reasons stated in the application, delay in filing the application for leave to file appeal is hereby allowed. For the similar reason, leave to file appeal is hereby granted.

4. Appeal be registered as per due procedure of law. Upon registration, the appeal stands admitted as no notice is required to respondent no.2 for the reasons already forwarded.

5. Heard learned counsel for the appellant and the learned A.P.P. in the appeal.

6. The record would show that as for four dates, the appellant remained absent in the proceedings for examining himself and his witnesses for consideration of the learned Judicial Magistrate First Class, as to whether the process for the offence punishable under

section 138 of the Negotiable Instruments Act should be issued, the complaint was dismissed.

7. Learned counsel for the appellant submits that since the Advocate did not inform the dates to the appellant and due to the said communication gap, he was unable to remain present as the matter was remanded back by the High Court earlier in view of order dated 14/6/2013 in Criminal Writ Petition no. 121 of 2011.

8. Considering all the facts on record, in my view, the appellant cannot be punished for the negligence of the Advocate in the set of particular facts. Therefore, the appeal deserves to be allowed. In the result, the following order:-

9. The order of the learned Judicial Magistrate First Class, Aurangabad dated 13/09/2013 passed in R.C.C. No. 6450 of 2010 is hereby quashed and set aside. The matter is remanded back to the learned Judicial Magistrate First Class, Aurangabad.

10. The appellant is directed to appear before the learned Judicial Magistrate First Class, Aurangabad

positively on 15<sup>th</sup> September, 2015 and take steps promptly without asking for any adjournment except for any exceptional circumstances. The appeal is accordingly disposed of.

11. Criminal Application No. 901 of 2015, Criminal Application no. 900 of 2015 and the Appeal stands disposed of.

12. Parties to act on authenticated copy of this order.

**[M.T. JOSHI]**  
**JUDGE**

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