

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

CRIMINAL REVISION APPLICATION NO. 88 OF 2014

Agasti Sarv Seva Sangh

Agasti Nagar, Akole,

Tq. : Akole, Dist. :

Ahmednagar (Register

No. Maha/2355),

Through its Manager

Vasant S/o Shrawan Baviskar.

..... APPLICANT

V E R S U S

1. Raju Mahadeo Sangle
Age : 45 Yrs., Occ. Labour
Contractor, R/o : At
Dadegaon, Post :
Changarpuri, Tq. Paithan,
Dist. : Aurangabad.

2. The State of Maharashtra

..... RESPONDENTS

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Mr. S.T.Shelke, Advocate for the Applicant.

Mr. V.D.Godbharle, A.P.P. for R-2 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 15th JANUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By the consent of the learned counsel for the Applicant and the learned A.P.P. for respondent No. 2 - State, the present Criminal Revision Application is taken up for final hearing.

2. Heard Mr. S.T.Shelke, the learned counsel for the applicant and Mr. V.D.Godbharle, the learned A.P.P. for respondent No. 2 - State.

3. The present Criminal Revision Application is filed against the Order dated 27/12/2013 passed by the learned Judicial Magistrate First Class, Akole below Exh. 1 in Complaint S.T.C. No. 135/2010, by which the learned Magistrate dismissed the Complaint in default.

4. The applicant is the original complainant. The complainant filed Complaint u/s 138 of the Negotiable Instruments Act, 1881 and u/s 420 of the Indian Penal Code

against the respondent. The learned Magistrate passed order, thereby issued process against the respondent u/s 138 of the Negotiable Instruments Act.

5. The complainant took all steps to serve the respondent. However, for one reason or the other, the respondent was not served.

6. Ultimately, on 27/12/2013, the learned Magistrate dismissed the Complaint in default on the basis of the letter of this Court bearing No. A(Spl)/0404/105/2013 dated 04/06/2013 and the letter No. 9227 of 2013 dated 21/08/2013 issued by the District Court, Ahmednagar in order to reduce the pendency of the old cases and since it is difficult to secure the presence of the respondent.

7. Mr. S.T.Shelke, the learned counsel for the applicant rightly pointed out to this Court that all the steps were taken by the complainant to serve the respondent. Therefore, it can not be said that the applicant/complainant was not diligently prosecuting the complaint.

8. A very strange way is adopted by the learned Magistrate to dismiss the complaint. Such an approach on the part of the learned Magistrate to deal with the criminal complaints, can not stand to the scrutiny of law. In fact, this Court on 25/06/2014 has also set aside the similar order of the similar Judge of the Court below in Criminal Revision Application No. 35 of 2014.

9. In the present case, notice for final disposal was given. The record shows that the respondent is duly served. In spite of the due service, the respondent chose not to remain present before this Court either personally or through any authorized person or through the learned counsel.

10. The order passed by the learned Magistrate can not stand for a single minute on the touch stone of law. It is not expected from the learned Magistrate to decide the matter in such a fashion, in which the learned Magistrate has decided. In that view of the matter, the impugned order dismissing the Complaint in default only on the basis of the letter of this Court and the letter of the District Court,

Ahmednagar [supra] is liable to be set aside and accordingly it is set aside. The criminal case bearing S.T.C. No. 135/2010 on the file of the Judicial Magistrate First Class, Akole, District Ahmednagar is restored. No costs.

11. With the above observations, Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 88.2014 - [J]

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