

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

CRIMINAL REVISION APPLICATION NO.91 OF 2014

Agasti Sarv Seva Sangh Agasti Nagar Akole .. Applicant

Versus

Zabbu Bhima Pawar .. Respondent

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

Mr.S.G.Nandedkar, APP for respondent/State.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 26.03.2015

P.C. :-

1. Heard. Learned counsel for the applicant. None appears for the respondent although served. The applicant is the original complainant in S.T.C. No. 342 of 2008 filed against the respondent herein for offence punishable under Section 138 of Negotiable Instruments Act and 420 of Indian Penal Code.

2. The applicant herein impugned order dated 27.12.2013 passed by the Judicial Magistrate, First Class, Akole, thereby dismissing the complaint in default. Perused the order dated 27.12.2013. It prima-facie appears that the learned Judicial Magistrate, First Class, Akole had dismissed the complaint on the ground

that the said case is about five years old and it was incumbent upon the learned Judicial Magistrate, First Class, to reduce the pendency of the old cases specifically under Section 138 of Negotiable Instruments Act and hence only in order to reduce the pendency the learned Judicial Magistrate, First Class, has dismissed the said complaint. The learned counsel for the applicant has drawn attention of this Court to the order dated 28.01.2014 passed by this Court (Coram:-A.M.Thipsay, J.) wherein this Court had also remanded the matter in the similar circumstances and had allowed the revision application. The impugned order was thus set aside. In the said case also the present applicant was the petitioner. Similarly by orders of several Courts the complaint filed by the revision petitioner have been restored to its original status. The learned counsel for the applicant rightly submits that in order to reduce the pendency of the matter it would not be appropriate for any Court to dismiss the complaint for want of prosecution. Moreover, it is pertinent to note that the order passed below Exhibit- 1 dated 27.12.2013 is not an order under Section 256 of Criminal Procedure Code. In that eventuality the complainant would be at liberty to file an application seeking leave to appeal and seek remand of the matter. The said impugned order is a cryptic order, assigning no legal provision for dismissal

of the complaint in default.

3. In view of this the revision application deserves to be allowed. The order dated 27.12.2013 passed by Judicial Magistrate, First Class, in S.T.C. No. 342 of 2008 is hereby quashed and set aside. The matter is restored to its original status. The revision application is allowed in above terms and is disposed of.

[SMT. SADHANA S. JADHAV,J.]