

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 703 OF 2002

Sudarshan s/o Chandrakantrao Mahapure,
Age : 32 years, Occu. Visiting Lecturer,
R/o Modikhana, Jalna, District Jalna

APPELLANT

VERSUS

1. Kishor s/o Shankar Mudiraj,
Age : 28 years, Occu. Business,
R/o Near Mahakali Mandir,
Modikhana, Jalna, Dist. Jalna

2. State of Maharashtra

RESPONDENTS

Mr. Joydeep Chatterji, Advocate for the appellant
Mr. S.R. Palnitkar, A.P.P. for respondent No.2/State
None for respondent No. 1

CORAM : M.T. JOSHI, J.

DATE : 15/06/2015

ORAL JUDGEMENT :

1. Heard learned counsel for the appellant and
learned A.P.P. None present for respondent No. 1.

2. Aggrieved by the dismissal of the complaint for
the offence punishable under section 138 of the
Negotiable Instruments Act and consequential acquittal

of the respondent No.1, the present appeal is preferred.

3. The record would show that on 27th September, 2002, the present appellant as well as respondent No. 1 remained absent before the learned Chief Judicial Magistrate and adjournment application was filed on behalf of the present appellant for leading the evidence. Therefore, the proceeding was posted to 11th October, 2002. On the next date, however, the appellant/complainant remained absent. The learned Chief Judicial Magistrate waited upto 1.30 p.m. and thereafter, dismissed the complaint and acquitted the respondent No.1.

4. The record also shows that application for adjournment (Exhibit-37) was filed at 4 p.m. on 11.10.2002. However, the order dismissing the complaint was already passed by the learned Chief Judicial Magistrate.

5. Taking into consideration the overall facts and finding that the present appellant/complainant was not absent continuously and on the fateful date, he was ill

and therefore, could not attend the Court, the present appeal is required to be allowed. Hence, the following order :-

6. The appeal is allowed. The order dated 11th October, 2002, passed by the Chief Judicial Magistrate, Jalna in S.T.C. No. 1178/1999 is hereby set aside. Instead, the complaint (S.T.C. No. 1178/1999) is restored to the file of learned Chief Judicial Magistrate, Jalna, who shall allow both the parties to produce the material, including the evidence, if any on record and thereafter decide the complaint afresh on its own merit.

. The parties are directed to appear in the trial court on 27th August, 2015.

. The record and proceedings be remitted back to the court of learned Chief Judicial Magistrate, Jalna.

[M.T. JOSHI]
JUDGE