

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 3970 OF 2014

Gangamai Agro Trust,
Ghatnandra Tq.Sillod Dist.Aurangabad.
Through its authorized signatory
Suresh Murlidhar Hiwarde,
age 36 yrs., occu.service,
r/o as above.

... **APPLICANT**

VERSUS

Vitthal Jayram Tawar,
age major, occu.Mukadam,
r/o Bormal Tanda Post.Tidka,
Tq.Soygaon Dist.Ahmednagar.

... **RESPONDENT**

...
Shri Sunil B. Kakde, Advocate for applicant.
Shri K.D. Jadhav, Advocate h/f Shri A.K. Bhosale, Advocate for
respondent.

...

CORAM : INDIRA K. JAIN, J.

DATED : 23.09.2015.

JUDGMENT:

Rule. Rule made returnable forthwith. Heard with the
consent of learned counsel for the parties finally.

2] Here is an application u/s 482 of the Code of Criminal Procedure, 1973, for setting aside the order dated 13.6.2014 passed by the learned Judicial Magistrate, First Class, Sillod Dist.Aurangabad in S.C.C.No.1523/2004.

3] The facts giving rise to the present application may be stated in nut-shell as under:-

[a] Applicant is a sugar factory. Respondent is sugarcane cutting contractor. Respondent entered into contract with applicant - sugar factory for cutting and transporting sugarcane and accordingly an agreement was entered into between applicant and respondent.

[b] Respondent - contractor obtained advance amount of Rs.1,74,000/- from applicant - factory for cutting and transportation of sugarcane. At the end of crushing season, an amount of Rs.98,316/- was due and payable by respondent to applicant. Respondent issued cheque of Rs.98,316/- dated 10.4.2004 to applicant. The said cheque was dishonoured on account of

insufficient funds. Applicant issued legal notice to respondent on 11.6.2004. Respondent did not pay the amount as per cheque despite notice and so proceedings u/s 138 of the Negotiable Instruments Act, 1881, were initiated before the learned Judicial Magistrate, First Class.

4] Respondent put his appearance on 22.3.2005. Plea was recorded on 1.10.2005. Affidavit in lieu of evidence was tendered on 31.10.2011.

Thereafter, on 13.6.2014, following order came to be passed by the Trial Court –

"Complainant absent.
No evidence is adduced.
Accused is also absent.
No steps taken to proceed with the case.
Hence, complaint is dismissed & accused
is also discharged."

5] Learned counsel for the applicant vehemently submitted that respondent was absent for a considerable time. Complainant moved applications from time to time to secure presence of accused. On 6.8.2011, respondent applied for cancellation of non-bailable

warrant. He vehemently contended that complainant had taken effective steps to proceed with the case but for want of presence of respondent, proceedings were delayed. Learned counsel submits that there was no fault on the part of complainant and the impugned order has resulted into denial of an opportunity to complainant.

6] Per contra, learned counsel for respondent strenuously submitted that applicant had not taken the requisite steps. Complainant did not make himself available for cross-examination and the Court had rightly dismissed the complaint.

7] On perusal of Roznama, it is apparent that complaint was filed in the year 2004 and the impugned order of dismissal was passed in the year 2014. Most of the times, accused remained absent though he put his appearance in 2005. Even non-bailable warrant was required to be issued, which was subsequently cancelled on the application of respondent, subject to payment of penalty.

8] In this view of the matter, no fault can be attributed to the complainant. The impugned order is not in consonance with the record. This Court is thus inclined to allow the application. Hence,

the following order.

- [I] Criminal Application No.3970/2014 is allowed.
- [ii] Impugned order dated 13.6.2014 passed by the learned Judicial Magistrate, First Class, Sillod Dist. Aurangabad, in S.C.C.No.1523/2004 is set aside.
- [iii] Matter is remitted to the trial Court to proceed further and decide the same in accordance with the law.
- [iv] Parties to appear before the trial Court on 26.11.2015.
- [v] Rule is made absolute in the aforesaid terms.

[INDIRA K. JAIN, J.]