

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

CRIMINAL APPLICATION NO. 4316 OF 2013

Rajkumar Chandrabhanlal Agrawal

Age: 51 years, Occu. Business,

R/o Tamsa, Tq. Hadgaon,

Dist. Nanded

..APPLICANT

VERSUS

Datta Keshavrao Kadam

Age: 33 years, Occu. Business,

R/o c/o Mahesh Krushi Seva Kendra

Market Committee, Bhokar,

Tq. Bhokar, Dist. Nanded

..RESPONDENT

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Mr. M.V. Ghatge, Advocate holding for Mr. B.N. Gadegaonkar,
Advocate for applicant.

Mr. S.G. Kawade, Advocate for respondent.

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CORAM : M.T. JOSHI, J.

DATED : 16th DECEMBER, 2015

ORAL ORDER :

Heard.

2. Aggrieved by the order of dismissal in default of the
complaint for the offence punishable under Section 138 of the

Negotiable Instrument Act passed by the Learned Judicial Magistrate First Class, Hadgaon dated 30th June, 2012 in S.C.C. No. 202/2008, the applicant wants to prefer the appeal and, therefore, the present application for leave to file appeal is preferred.

3. The applicant was prosecuting the respondent over the dishonour of cheque of Rs.1,10,109/- towards goods given on credit to the respondent. The record would show that on many occasions, the respondent remained absent and, therefore, time and again, bailable warrant was issued. However the warrant was not served. In this situation, ultimately when on some dates the applicant remained absent, the complaint came to be dismissed in default.

4. Considering all these facts on record, in my view, leave to file appeal needs to be granted. Application is therefore allowed and disposed of.

5. Appeal be registered according to the due procedure of law. Upon registration, the appeal stands **admitted**.

6. Heard both sides in the appeal. For the reasons stated hereinabove, the appeal is also allowed.

7. The impugned order of the learned Judicial Magistrate First Class is hereby set aside. Instead, the complaint i.e. S.C.C. No. 202/2008 is restored to the file of the learned Judicial Magistrate First Class. The learned Judicial Magistrate First Class is directed to proceed with the case as per the due procedure of law. Both sides to appear in the Trial Court on 21st January, 2016.

7. Application and appeal accordingly allowed and disposed of without any order as to costs.

(M.T. JOSHI, J.)