

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

CRIMINAL WRIT PETITION NO.1397 OF 2014

Sheshrao s/o Yadavrao Dehere,
Age 65 years, Occu. Agriculture,
R/o Soundana, Taluka Kaij,
District Beed,
at present R/o Kalpana Colony,
Ring Road, Ambajogai
District Beed

..Petitioner

Versus

1. The State of Maharashtra
2. Pandit Sakharam Rathod,
Age 45 years, Occu. Agriculture
and Labour Contractor,
R/o Hadgaon, Taluka Partur,
District Jalna

..Respondents

Mr A.B. Tele, Advocate for petitioner
Mrs B.B. Gunjal, A.P.P. for respondent No.1
Mr V.A. Bagal, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 10th September 2015

PER COURT

1. The complaint bearing S.C.C.No.47/2008, filed under Section 138 of the Negotiable Instruments Act came to be dismissed on 9th December 2013 by the learned Judicial Magistrate, First Class, Kaij on the ground that the present petitioner has failed to take steps since 21st July 2012 for proceeding further in the complaint. Said order was upheld by the Additional Sessions Judge, Ambejogai in Criminal Revision No.7/2014 vide order dated 28th August 2014, as such present petition.

2. Having heard learned Counsel for the petitioner, learned Assistant Public Prosecutor for State and learned Counsel for

respondent No.2, it is noted that the Court, having satisfied about the requirement of compliance of Section 138 of the Negotiable Instruments Act has already ordered issuance of process in the present matter. Thereafter, from the perusal of the Rojnama, it reflects that the parties to the complaint remained absent.

3. The cause cited appears to be that the Counsel who had appeared on behalf of complainant did not attend the hearing of the said proceedings.

4. In view of above, it will be appropriate in my opinion to order restoration of the complaint.

5. As such, the order dated 9th December 2013 passed by Judicial Magistrate, First Class, Kaij in S.C.C. Case No.47 of 2008 and the order dated 28th August 2014, passed by the Additional Sessions Judge, Ambajogai in Criminal Revision No.7 of 2014 are hereby set aside, and S.C.C.No.47 of 2008 stands restored to the file of learned Judicial Magistrate, First Class, Kaij subject to payment of costs of Rs.10,000/- (Rs. Ten thousand) to be paid by the present petitioner to the respondents herein within a period of four weeks from today.

6. The parties hereto agreed that they shall appear before the learned Judicial Magistrate, First Class, Kaij on 5th October 2015.

7. Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)