

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5730 OF 2015
(Vishwanath s/o Chandrakant Digge Vs. Issak s/o
Maheboobsabh Shaikh)

Mr. Vishwajit R. Jain (Kamboj), Advocate for
the applicant

CORAM : M.T. JOSHI, J.
DATE : 11/12/2015

ORAL ORDER :

1. Heard.
2. Aggrieved by the dismissal in default of the complaint for the offence punishable under section 138 of the Negotiable Instruments Act, the applicant wants to prefer an appeal and therefore, the present application for grant of leave to file appeal is filed.
3. The facts on record would reveal that upon filing of the complaint, the present applicant/complainant remained absent for three dates and thereafter, his verification could be recorded. Thereafter, no steps were taken for issuance of summons. The learned Judicial Magistrate First Class waited for

four dates and thereafter, the complaint came to be dismissed by the impugned order.

4. Taking into consideration all the above facts on record, leave to file appeal is hereby granted. The application is accordingly allowed and disposed of.

5. Office to register the appeal. Upon registration of the appeal, it stands admitted.

6. Since the respondent was yet to be served before the trial court, the present appeal is heard in absence of the respondent.

7. The learned counsel for the appellant submits that due to the lapse of the advocate at the trial court, the complaint was dismissed. However, in fact, the learned Judicial Magistrate First Class was required to handle the case unnecessarily for a period of one year.

8. Considering all these facts on record, the appeal is hereby allowed. The order dated 25th August, 2015 passed by the Judicial Magistrate First Class, Nilanga in S.C.C. No. 427/2014, is hereby quashed and

set aside. The complaint is restored to the file, on the condition that the appellant/complainant deposits an amount of Rs. 5000/- (rupees five thousand) in the trial court as a penalty to be appropriated to the State within a period of four weeks from the date of appearance of the appellant/complainant before the trial court. The complainant is directed to appear in the trial court on 20th January, 2015.

9. The present application as well as appeal stand disposed of accordingly.

[M.T. JOSHI]
JUDGE

npj/criapln5730-2015