

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

Criminal Appeal No.794 OF 2014

Tridal Maji Sainik Pat Sanstha Ltd.

....Applicant.

Versus

Achyut S/o Maroti Funde.

....Respondent.

Shri. R.D. Khadap, Advocate for applicant.

Shri. R.K. Bhakde, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 30th July, 2015.

ORDER :

1. The appeal is filed against the order of dismissal of SCC No.467/2010 which was pending in the Court of the Judicial Magistrate, First Class, Ambajogai. Private complaint was filed by the present appeal for offence under section 138 of the Negotiable Instruments Act is dismissed and the accused is acquitted under section 256 of the Code of Criminal Procedure. Both the sides are heard.

2. The record shows that plea of the accused was recorded on 28/07/2014 and then the matter was kept on 8/8/2014 for leading evidence. On that date neither the complainant nor his counsel remained present and as the accused insisted for dismissal of the complaint, the

complaint came to be dismissed. Thus, no evidence was given on the first date of hearing and the complaint came to be dismissed. In such case blame can be attributed to anybody including the Advocate. In view of this circumstance and considering the fact that it is cheque bounced case this Court holds that the order needs to be set aside for giving opportunity to the complainant to take decision on merits.

3. The accused is required to spend on the present proceeding. So this Court holds that subject to depositing of Rs.5000/- by the appellant the appeal can be allowed. The appeal is allowed subject to depositing of Rs.5000/- (Rupees Five Thousand only) by the complainant society in the Court of the Judicial Magistrate First Class before 4-9-2015. If the cost is not deposited the appeal is to be treated as dismissed. If the cost is deposited the matter is to be treated as remanded back to the trial Court. The parties are to appear before the trial Court on 4-9-2015. The complainant is allowed to prosecute the case only if the cost is deposited. The cost amount is allowed to be paid to the accused.

[T.V. NALAWADE, J.]

mnp/