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

CRIMINAL APPLICATION NO. 408 OF 2015

Gourav s/o Omprakash Vadhava,
Age: 31 years, Occu: Business,
R/o. Punjabi Colony, Ward No. 1,
Shrirampur Dist. Ahmednagar

..APPLICANT

VERSUS

Manoj s/o Shankar Tanpure,
Age: 40 years, Occu: Business,
R/o. Davkhar Khalwadi, Rahuri,
Tal. Rahuri, Dist. Ahmednagar

..RESPONDENT

Mr Shaikh Mazhar A. Jahagirdar, Advocate for applicant

CORAM : N.W. SAMBRE, J.

DATE : 1st April, 2016

ORAL ORDER :

Heard Mr Jahagirdar, learned Counsel appearing on behalf of the applicant.

2. Learned Judicial Magistrate First Class, Rahuri has rejected the complaint being S.T.C. No.602 of 2014, filed by the applicant, for offence punishable under section 138 of the Negotiable Instruments Act, vide order dated 19th December, 2014, on the ground that the same was time barred.

3. The reason cited in the order is that the earlier court, i.e. Court of Judicial Magistrate First Class at Shrirampur had passed order on 15th November, 2014 returning the complaint to the applicant-complainant for

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being presented before the competent court. According to the learned Judicial Magistrate First Class, Rahuri, though the order of returning the complaint with documents was passed by Judicial Magistrate First Class, Shrirampur on 15th November, 2014, the same was presented to the said Court on 17th December, 2014.

4. Mr Jahagirdar invites my attention to the fact that the complaint/ documents were received by the applicant on 16th December, 2014 and immediately on the next day, i.e. 17th December, 2014 he had presented the same before the Judicial Magistrate First Class, Rahuri.

5. None appears on behalf of the respondent though served.

6. It is required to be noted that the applicant-complainant has received the documents in S.T.C. No.136 of 2014 from the court of Judicial Magistrate First Class, Shrirampur, on 16th December, 2014. The said aspect is lost sight of by the learned Magistrate at Rahuri while ordering rejection of the complaint being time barred.

7. In view thereof, in my opinion, the learned Magistrate has committed an error which is not sustainable, as the complaint was presented by the applicant immediately on the next day after receipt of original papers from the court at Shrirampur. In this view of the matter, the order dated 19th December, 2014, passed by Judicial Magistrate First Class (Court No.3), Rahuri is not sustainable.

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8. The above referred contentions are not controverted by the respondent because in spite of service of notice he has remained absent.

9. In the result, Criminal Application succeeds.

The order dated 19th December, 2014, passed by Judicial Magistrate First Class (Court No.3), Rahuri, below Exh.1, in S.T.C. No.602 of 2014, is set aside.

S.T.C. No.602 of 2014 is restored to the file of Judicial Magistrate First Class, Rahuri, who is directed to decide the same, in accordance with law.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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