

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

CRIMINAL APPEAL NO. 219 OF 2016

Gopichand Lahau Bharati
Age: 69 years, Occu.: Agri.,
R/o Village Takali, Tq. Kaij,
Dist. Beed.

..APPELLANT

VERSUS

1. State of Maharashtra
Through Police Station, Kaij
. Kaij, Dist. Beed.

2. Navnath Tukaram Chavan
Age: 52 years, Occu.: Mukadam/
Labour contractor of Sugar Factory,
Ranjani Tq. Kallam, Dist. Osmanabad,
R/o Ghonasi Tq. Ghnsangwi, Dist. Jalna

..RESPONDENTS

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Mr. B.A. Dhengle and Mr. S.A. Dhengle, Advocates for applicant.
Mrs. R.K. Ladda, APP for Respondent No.1.10.APPLN.5827.15.doc
Mr. K.N. Shaikh, Advocate for Respondent No.2.
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**CORAM : INDIRA K. JAIN, J.
DATED : 31st MARCH, 2016**

ORAL JUDGMENT :

. This appeal takes an exception to the order dated 10.04.2015
passed by learned Judicial Magistrate First Class, Kaij in S.C.C. No.
133/2008.

2. Heard Mr. Dhengle, Advocates for applicant, Mrs. Ladda, APP for Respondent No.1 and Mr. Shaikh, Advocate for Respondent No.2.

3. Applicant is the original complainant in SCC No. 133/2008 filed against Respondent No.2 for the offence punishable under Section 138 of the Negotiable Instruments Act. On 10.04.2015 matter was taken up on board by learned Judicial Magistrate First Class, Kaij in special drive as per the direction of the High Court. Since complainant was not present, it was observed by learned Magistrate that he was not interested in proceeding with the matter and dismissed the complaint under Section 256 of the Code of Criminal Procedure.

4. Perused copy of Rojnama. It shows that complainant was present earlier on many occasions before the Court. The observations of the learned Magistrate that since filing of complaint, complainant neither appeared before the Court nor took any step are thus against the record. Impugned order indicates that no notice of special drive was given to complainant.

5. In this background questioned order would not sustain. Even otherwise to avoid denial of justice appeal deserves to be allowed. Hence the following order:

ORDER

- I) Criminal Appeal No. 219 of 2016 is allowed.

- II) Impugned order dated 10.04.2015 passed by learned Judicial Magistrate First Class, Kaij in S.C.C. No. 133/2008 is quashed and set aside and matter is remitted back to the Trial Court for its disposal in accordance with the law.

- III) No order as to costs.

(INDIRA K. JAIN, J.)