

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 777 OF 2015
(Ashish s/o Pradip Shaha Vs. Shri Tirupati Nagari
Sahakari Patsanstha Maryadit, Dhule and others)

Mr. Y.B. Bolkar, Advocate holding for Mr. Anudip Sonar,
Advocate for the petitioner

Mr. Sachin S. Deshmukh, Advocate for respondents
No. 2 and 3

CORAM : M.T. JOSHI, J.
DATE : 24/02/2016

ORAL ORDER :

1. Heard. Notice for final disposal of the writ petition was already issued.

2. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

3. While the order of the learned Judicial Magistrate First Class, dismissing the complaint for the offence punishable under section 138 of the Negotiable Instruments Act in default, would show that the present petitioner/complainant was negligent, the learned counsel for the petitioner points towards the rojnama from 30.09.2014 till the date of dismissal of the

complaint. The rojnama would show that the complainant was vigilant in filing an application and getting non-bailable warrant issued against the respondents No. 2 and 3. On two occasions, the Presiding Officer himself was deputed for training. Thereafter, for one date, the complainant earlier remained absent and finding that on the very next date he was absent, the complaint was dismissed.

4. Considering the fact that since the year 2009, the petitioner/complainant is prosecuting his complaint for the offence punishable under section 138 of the Negotiable Instruments Act and the respondents though appeared earlier, continued to remain absent, compelling the petitioner/complainant to time and again take steps for securing their presence, the writ petition is allowed in terms of prayer clause [C] thereof, which reads as under.

“By way of appropriate writ, or order or direction in the like nature, this Hon'ble High Court may kindly quash and set aside the impugned order dated 10/04/2015 passed by the

Ld. Judicial Magistrate First Class, (Court No. 6), Dhule, District Dhule in S.T.C.C. No. 588/2009 and the S.T.C.C. No. 588/2009 may kindly be restored in its original file."

. The Rule is made absolute on the above terms.

[M.T. JOSHI]
JUDGE

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