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

CRIMINAL APPLICATION NO. 3999 OF 2015

Anant s/o Ramdas Chavan,
Age: 32 years, Occu: Business,
R/o C/o. Shriram Traders,
R.J. Complex, Ausa Road,
Latur, Tq. And District Latur

..APPLICANT
(Orig.Complainant)

VERSUS

1. The State of Maharashtra

2. Anand s/o Murlidhar Garad,
Age: Major, Occu: Business,
R/o. Hotel Maitri Lunch Home,
Tuljapur-Latur Road, Shindala,
Tq. Ausa, District Latur

(R.No. 2 ori. accused)

..RESPONDENTS

Mr V. B. Jadhav, Advocate for applicant;
Mr D. V. Tele, Addl. Public Prosecutor for respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 10th March, 2016

ORAL ORDER :

By the present application under section 378 (4) of the Code of Criminal Procedure, the applicant seeks special leave to appeal against the order dated 10th April, 2015, passed by Judicial Magistrate First Class, Ausa, in S.T.C. No.357 of 2014, thereby dismissing in default the said criminal case initiated against respondent no.2 for offence punishable under section 138 of the Negotiable Instruments Act.

(2)

2. By the impugned order, the complaint came to be dismissed in default as the applicant-complainant had not taken steps for serving respondent no.2 herein.

3. Respondent no.2 has refused to accept the notice issued in the matter, as is apparent from the affidavit of service filed to that effect along with photo copy of speed post envelope. Thus, the service on respondent no.2 is complete.

4. For the reasons stated in the application and since the same are not controverted by respondent no.2, in my opinion, it will be appropriate to allow the application. I, therefore, pass following order :-

The order dated 10th April, 2015, passed by Judicial Magistrate First Class, Ausa, in S.T.C. No.357 of 2014, is quashed and set aside.

S.T.C. No.357 of 2014 stands restored to the file of Judicial Magistrate First Class, Ausa, subject to payment of costs of Rs.1,500/-, to be deposited with the Library, Advocates' Association of Bombay High Court at Aurangabad, within a period of one week from today.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj