

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

CRIMINAL WRIT PETITION NO. 1459 OF 2015

Shri Vijaykumar s/o Mishrilal Bhansali,
Age: 37 years, Occu: Business,
R/o: Khandbara, Tq. Navapur,
District Nandurbar

...Petitioner

versus

1. Shri Baliram Ramchandra Patil,
Age: 54 years, Occu: Agri. & Business,
R/o: Kolpimpri, Tq. Parola,
District Jalgaon

2. The State of Maharashtra ...Respondents

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Mr. U. S. Bhadgaonkar, Advocate for petitioner
Mr. Girish Rane, Advocate for respondent No. 1
Mr. N. T. Bhagat, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 21st MARCH, 2016

ORAL ORDER :

The order of dismissing the appeal of the accused, who is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act for want of prosecution passed by learned Additional Sessions Judge, Amalner, below Exhibit-1 and 29 on 09/10/2015, is impugned in the present petition.

2. Learned Counsel for the petitioner submits that the appeal, substantial remedy, is taken away for the default of lawyer

and the petitioner cannot be blamed for the same. He would rely upon the judgment of the Apex Court in the matter of **Rafique and anr. Vs Munshilal and anr., reported in (1981) 2 SCC 788**, in which, the Apex Court has taken a view that the lapse on the part of the Counsel shall not affect the rights of the parties.

3. Learned Counsel for the respondent-complainant opposed the prayer, as according to him, the petitioner is delaying the hearing of the appeal before the learned Court below and Sessions Judge was right in dismissing the appeal for want of prosecution.

4. Having bestowed my thoughts to the submissions made and in view of the undertaking given by learned Counsel for the petitioner-original appellant that the appellant shall not seek any further adjournment in the appeal and that he shall pay costs of Rs.5000/- (Rs. Five thousand only) to be deposited before the Court below within a period of two weeks from today to which the respondent is entitled to.

5. In view of above, the order impugned passed below Exhibits-1 and 29 in Criminal Appeal No. 33 of 2009 on 09/10/2015 is set aside. The appeal stood restored to the file of learned Sessions

Court, Amlner.

6. The appellant shall abide by the undertaking of not seeking any adjournment, failing which, learned Sessions Court will be at liberty to pass appropriate orders.

7. If the cost is not deposited within time stipulated as referred above, original order dismissing the appeal shall hold as it is.

8. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]