

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6231 OF 2015

Baban S/o Bhagwan Misal

.. Applicant

Vs.

Kishor S/o Laxman Narayankar

.. Respondent

Mr. A.N. Nagargoje, Advocate for the applicant

Mr. Ramesh P. Shendge, Advocate h/f Mr. N.L. Jadhav, Advocate
for the respondent

CORAM : N.W. SAMBRE, J.

DATE : 24/06/2016

ORAL ORDER :

Heard.

2. The applicant claims to have initiated proceedings under section 138 of the Negotiable Instruments Act against the respondent vide S.C.C. No. 237 of 2012. On 12/11/2014, 13/12/2014, 23/2/2015, 1/6/2015, 12/8/2015, 22/9/2015 and 1/10/2015, the complainant and his counsel remained absent. The learned Judicial Magistrate First Class, Patoda, Dist. Beed by order dated November 4, 2015 dismissed the complaint under section 256 of the Code of Criminal

Procedure and acquitted the accused/respondent of the offence punishable under section 138 of the Negotiable Instruments Act.

3. Shri Nagargoje, learned counsel for the applicant, while questioning the acquittal would urge that for the default of Advocate Shri S.M. Budhwant, the applicant should not be made to suffer by the order of the learned Magistrate. For the said purpose, 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**. According to him, the applicant be put to some conditions and the acquittal be set aside and the matter be remanded back. He would rely upon the pleadings in paragraph no.6, so far as above submissions are concerned.

4. Shri Shendge h/f Mr. Jadhav, learned counsel for the respondent submits that absence of the applicant in the complaint, appears to be intentional and not bonafide. According to him, it is easy to blame the Advocate, who is not before this Court and the complainant is trying to take benefit of the same.

5. Having bestowed thoughts to the submissions made, except the bald allegations in paragraph no.6 that the Advocate, because of his family problems, left the village Patoda and as such, not attended the proceedings on behalf of the complainant before the learned Magistrate, no other material is placed on record. There is no communication issued to the said Advocate nor any confirmation to that effect from the Advocate.

6. It is to be noted that even if the said statement of the applicant is believed that the Advocate remained absent and his complaint came to be dismissed, the fact remains that the applicant has not come out with an explanation of source of information about dismissal of his complaint.

7. Applicant has promptly filed the present application within limitation from the date of dismissal of his complaint.

8. In my opinion, the above conduct of the applicant, blaming his own Advocate for non-appearance before the learned Magistrate, so as to make a ground for setting aside the order of the acquittal, requires

to be rejected in the light of the observations made hereinabove. The Application is dismissed. Leave is refused.

[N.W. SAMBRE]
JUDGE

arp/