

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.270 OF 2015**

Sou.Alkabai Balasaheb Shinde .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr.S.Mangaonkar i/b. Mr.A.Kapadnis, Advocate,  
for the Applicant  
Mrs.P.P.Shinde, APP, for the Respondent No.1 –  
State

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 20.06.2016**

**P.C.**

. Heard learned counsel for the  
Applicant.

2. Notice was issued to the Respondent  
No.2 vide order dated 13.07.2015. Office noting  
shows that notice issued to the Respondent No.2  
was duly served. As far as private service is  
concerned, Affidavit of service is filed stating  
therein, that the Respondent No.2 has refused to  
accept service. Since the contesting Respondent

No.2 is duly served, the aforesaid Application is taken for final disposal.

3. The Applicant is the original Complainant, who has filed a private complaint in the Court of the learned Judicial Magistrate F.C., Kalwan, Nasik, alleging an offence punishable under Section 138 of the Negotiable Instruments Act. On 23.10.2012, the learned Magistrate was pleased to issue process as against the accused for the aforesaid offence. It appears that the Respondent No.2 appeared before the learned Magistrate and furnished bail. On 16.04.2013, the Applicant filed her Affidavit of evidence. On 13.05.2015, the learned Magistrate was pleased to dismiss the complaint for want of prosecution and non appearance of the Applicant (Original Complainant) and the Respondent No.2 came to be acquitted.

4. Learned counsel for the Applicant submits that during the course of trial, the Respondent No.2 had consistently remained absent and as such, a non-bailable warrant was issued against him. He submitted that, infact, the learned Magistrate had observed in one of its orders, that the Respondent No.2 was intentionally avoiding to appear before the trial Court, pursuant to which the sureties furnished by the Respondent No.2 were forfeited and notice was issued to the sureties, calling upon them as to why penalty should not be imposed for failing to secure the presence of the Respondent No.2(accused). Learned counsel for the Applicant further submitted that the Advocate for the Applicant was present before the learned Magistrate on 21.04.2015. However, the matter was adjourned to 13.05.2015. He submitted that due to unforeseen circumstances, on 13.05.2015, neither the Applicant nor her Advocate could remain present, pursuant to which

the learned Magistrate dismissed the complaint vide order dated 13.05.2015. Learned counsel for the Applicant submits that the Applicant is ready and willing to appear on every date before the trial Court and is also ready to file an undertaking to that effect, if so necessary. Learned counsel for the Applicant has tendered a chart on the basis of the roznama which is at Exh.F to the Application, to show the number of times, the Complainant was present. The said chart is taken on record and marked as "X" for identification. He submitted that out of 50 dates, the Applicant(Complainant) was absent only on 14 dates and the Advocate for the Applicant on 5 dates. He submitted that the accused was absent on 38 dates and his Advocate on 33 dates. He submitted that in the interest of justice the impugned order be quashed and set aside and the case be heard on merits.

5. Perused the papers. It appears that despite notice being served on the Respondent No.2, he did not appear before this Court. It also appears from the Affidavit of service filed by the Advocate for the Applicant that the Respondent No.2 has refused to accept service. As the Respondent No.2 has been duly served and considering the narrow controversy in the Application, the Application is taken up for final hearing.

6. On a private complaint filed by the Applicant, the learned Magistrate, Kalwan was pleased to issue process vide order dated 13.05.2015 to the Respondent No.2. The Respondent No.2 appeared before the trial Court and furnished bail. A perusal of the roznama and chart tendered today shows that the Respondent-accused and his Advocate were absent for more than 30 out of 50 dates in the trial Court. The Applicant was absent on 1-2 occasions before the

case was dismissed for non-prosecution. From the perusal of the roznama it appears that the Applicant was absent in all, for about 14 out of 50 dates, when the matter appeared before the trial Court.

7. Considering the statement made by the learned counsel for the Applicant and after perusal of the roznama, it is necessary in the interest of justice to quash & set aside the order dated 13.05.2015 passed by the learned Judicial Magistrate F.C., Kalwan by which S.C.C.No.684 of 2012 came to be dismissed in default for want of prosecution and for non appearance of Complainant and consequently, the Respondent No.2 being acquitted.

8. Accordingly, the impugned order is quashed & set aside and the matter is restored to its original file. The Complainant shall remain present before the trial Court on

**11.07.2016.** The Complainant shall also remain present on every date given by the trial Court, except in exceptional circumstances.

9. Accordingly, the Application is allowed & disposed of.

Parties to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**