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

**CRIMINAL APPLICATION NO.486 OF 2015
(FOR LEAVE TO FILE APPEAL)**

Akhtar Mohmmad Hanif Attar	...Applicant
Versus	
Mohan Shankar Pawar and Anr.	...Respondents

Ms.Priyanka Joshi i/b Mr.Rahul S. Kate, for the Applicant

Mr.Vaibhav R. Gaikwad, for the Respondent No.1.

Ms.P.P.Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 27th JULY, 2016

P.C. :

1. Heard learned Counsel for the applicant, learned counsel for respondent no.1 and the learned A.P.P.

2. By this application, the applicant seeks leave to file appeal against the Judgment and Order dated 8th September, 2015, passed by the learned 4th Judicial Magistrate First Class, Satara, in Summary Criminal

Case No.2860 of 2014, by which the applicant's complaint came to be dismissed and the respondent no.1 – accused came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Considering the controversy involved in the aforesaid application, Leave granted. Admit. The appeal is taken up for final disposal at the stage of admission, with the consent of the parties. Learned APP waives notice on behalf of the Respondent – State and Mr.Gaikwad, waives notice on behalf of Respondent No.1.

4. The applicant is the original complainant who had filed a complaint in the Court of the learned Judicial Magistrate First Class, Vaduj, alleging an offence punishable under Section 138 of the Negotiable Instruments Act, as against the respondent no.1. The said complaint was filed in August, 2012. On 27th June, 2013, process came to be issued as against the respondent no.1 – accused for the aforesaid offence. It appears that thereafter the learned Judicial Magistrate, First Class, Vaduj, vide order dated 12th November, 2014, was pleased to return the complaint back to the

applicant, under Section 201 of the Code of Criminal Procedure, on the ground, that the Court did not have the territorial jurisdiction to entertain the said complaint. Pursuant to the said order which was passed on 12th November, 2014, the complainant filed the aforesaid complaint before the learned 4th Judicial Magistrate First Class, Satara. As the complainant did not appear before the learned 4th Judicial Magistrate First Class, Satara, on couple of dates as is recorded in the order dated 8th September, 2015, the learned 4th Judicial Magistrate First Class, Satara, was pleased to dismiss the said complaint and acquit the respondent no.1 – accused of the aforesaid offences with which he was charged.

5. Learned Counsel for the applicant submitted that the applicant failed to appear before the concerned Court due to some personal difficulty. She submitted that the applicant is ready to give an undertaking that that he or his advocate will appear on every date of the hearing and will co-operate with the conduct of the trial.

6. Learned Counsel for the respondent no.1 – accused vehemently opposed the application. He submitted that the no indulgence was

warranted inasmuch as, the applicant – original complainant had failed to appear on almost 6 dates and as such the learned Magistrate had no option but to pass the impugned order dated 8th September, 2015.

7. Perused the papers. The record indicates that the applicant had indeed failed to appear before the learned Judge, seized of the matter, on several occasions, leaving no option for the learned Magistrate but to dismiss the complaint and acquit the respondent no.1. However, only by way of indulgence and only in view of the statement made by the learned counsel for the applicant, that the applicant is ready to give an undertaking to the Trial Court that he or his Advocate will appear before the Court on every date of hearing and will co-operate with the conduct of the trial, and will not seek any adjournment except in exceptional circumstances, that the present application is being considered, with a view to give an opportunity to the applicant.

8. Accordingly, the appeal is allowed and the impugned Judgment and Order dated 8th September, 2015, passed by the learned 4th Judicial Magistrate First Class, Satara in Summary Criminal Case No.2860 of 2014,

is quashed and set aside and Summary Criminal Case No.2860 of 2014, is restored back to its original file.

9. The applicant-complainant shall appear before the learned 4th Judicial Magistrate First Class, Satara, on 12th August, 2016, on which date, he shall given an undertaking that he or his Advocate will appear on every date of the hearing and will not seek any adjournments and that he will co-operate with conduct of the trial. The learned Magistrate shall thereafter proceed with the case.

10. Considering the conduct of the applicant, costs of Rs.5,000/- to be paid by the applicant to the Maharashtra State Legal Services Authority, before 12th August, 2016.

11. The appeal is allowed and disposed of in above terms.

12. All contentions of the parties are expressly kept open.

REVATI MOHITE DERE, J.