

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

CRIMINAL APPLICATION NO.343 OF 2017

Shrirang Prakashan's
Dainik Sarvamat, Ahmednagar,
through Prakash s/o. Shankarrao
Arkhade, Age-40 years,
Occ. Service,
r/o. Ward No.7, Sarvamat Press,
Shrirampur, Dist. Ahmednagar ..Appellant

Vs.

Sharad Bhimaji Zavare,
Age-38 years, Occ. Business,
r/o. At Post Takali Dhokeshwar,
Tq. Parnre, Dist. Ahmednagar ..Respondent

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Ms.Seema Pawar and Mr.A.G.Talhar, Advocates for
Appellant

Mr.Y.D.Kale, Advocate h/f. Mr.R.R.Karpe, Advocate for
respondent

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CORAM : SANGITRAO S. PATIL, J.

DATE : AUGUST 22, 2017

PER COURT :

Heard the learned Counsel for the applicant
and that of the respondent.

2. Arguable points are disclosed from the
submissions made by the learned Counsel for the
parties.

3. Admit the appeal. Upon admission, the learned Counsel for the respondent waives service on behalf of the respondent. Heard the appeal finally with the consent of the learned Counsel for the parties.

4. As per the order dated 11.11.2016, the application Exh.23 filed on behalf of the applicant seeking adjournment on the ground that the person conversant with the facts of the case has left the shop, came to be rejected. The learned Magistrate observed that sufficient opportunity was given to the applicant to proceed with the hearing of the complaint filed under Section 138 of the Negotiable Instruments Act. The learned Magistrate passed the impugned order and acquitted the respondent vide Section 256 of the Code of Criminal Procedure.

5. The learned Counsel for the applicant submits that the reason shown by the applicant for adjournment was genuine. The learned Magistrate

should have granted one more opportunity to the learned Counsel for the applicant to proceed with the case. He submits that the applicant has a good case. He prays that the impugned order may be set aside and the complaint may be ordered to be restored for disposal according to law.

6. The learned Counsel for the respondent strongly opposes the prayer for restoration of the complaint and submits that this appeal may be dismissed. However, he submits that in case the appeal is to be allowed, heavy costs may be imposed on the applicant.

7. The record shows that the learned Magistrate granted sufficient time to the applicant to proceed with the hearing of the complaint. However, on 11.11.2016, the applicant could not proceed with the complaint on the ground that the person, who was conversant with the facts of the case, had left the job. If that be so, there was no alternative with the

applicant, but to seek adjournment for hearing of the complaint. The learned Magistrate should have granted one more chance to the applicant on that ground.

8. In my view, it will be just, proper and expedient to set aside the impugned order, of course, subject to costs of Rs.10,000/- for being paid to the respondent, so that the respondent can be duly compensated. The applicant shall proceed with the complaint without seeking further adjournment. The respondent shall also co-operate the trial Court in deciding the complaint at the earliest.

9. In the result, I pass the following order :-

O R D E R

(i) The appeal is allowed.

(ii) The appellant shall deposit costs of Rs.10,000/- (Rs.Ten Thousand) in the the trial Court within two weeks from today for being paid to the respondent.

(iii) In case the amount of costs is deposited, S.C.C. No.2005 of 2015 be restored to its original number for being decided according to law.

(iv) The trial Court shall proceed with the hearing of the complaint expeditiously from the stage of filing of affidavit in lieu of the examination-in-chief.

(v) The respondent shall co-operate with the trial Court.

(vi) The parties shall appear before the trial Court on 14.09.2017 in case the complaint is restored after deposit of costs by the applicant.

[SANGITRAO S. PATIL, J.]

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