

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

**CRIMINAL APPEAL NO. 95 OF 2008
(Dr.Babasaheb Ambedkar Co-operative Sugar Factory Ltd.
Vs. Narayan Nivrutti Koale)**

Mr. V.D. Salunke, Advocate for the appellant
None for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 14th AUGUST, 2017

ORAL ORDER :

This is an appeal by the original complainant against the order dated 18th March, 2006, passed in S.C.C. No.1111 of 2004 by the learned Chief Judicial Magistrate, Osmanabad, whereby the complaint came to be dismissed because of absence of the appellant when the complaint was fixed for hearing.

2. The learned counsel for the appellant submits that the amount of Rs.52,000/- and odd is the subject matter of the cheque. The complainant was very much interested in prosecuting the complaint. The learned Magistrate did not extend sufficient opportunity to the complainant to proceed with the complaint. He, therefore, submits that the impugned order may be set

aside and the complaint may be ordered to be restored to its original file for being decided on merits.

3. None appeared for the respondent.

4. The impugned order reads as under:-

"0

1. Perused the record. It is seen that the plea of the accused is recorded on date 17-11-05 at Exh.14. Thereafter it is seen that on 30-11-05, 7-12-05, 27-12-05, 24-10-05, 7-2-06, 18-3-06, matter was fixed and adjourned. It is seen from roznama that for each these dates the complainant is absent and has failed to lead his evidence. Already specific orders were passed on Exh.15 on dtd. 30-11-05 and on Exh.1 on dtd. 7-2-06. Today aos, the complainant and his advocate absent when called. No any application is placed on record. It appears that the complainant is not interested in the proceeding hence the case is dismissed for want of prosecution.

2. The accused is acquitted of the offence punishable U/s 138 of the Negotiable Instruments Act.

3. His bail bonds stand cancelled.

Sd/-
18-3-06"

5. From the above mentioned order, it is quite clear that the learned Magistrate adjourned the case for six times for hearing after explaining the particulars of the offence to the respondent. However, the

appellant did not remain present before the learned Magistrate. A specific order was passed below Exh-15 on 30th November, 2005 and an ultimatum was given to the appellant for remaining present on the next date i.e. 7th February, 2006. On that day also, none appeared for the appellant before the learned Magistrate. Therefore, left with no alternative, the learned Magistrate passed the impugned order on 18th March, 2006 under Section 256 of the Code of Criminal Procedure and acquitted the respondent of the offence punishable under Section 138 of the Negotiable Instruments Act.

6. There is absolutely no reason assigned by the appellant for his absence before the learned Magistrate on the dates on which the complaint was fixed for hearing. In the absence of any justifiable reason for the absence of the appellant before the learned Magistrate on the dates given for hearing of the complaint, no discretion can be exercised in favour of the appellant who was totally negligent in prosecuting his case. Since there is no sufficient and satisfactory ground shown by the appellant for his absence before the learned Magistrate on the dates on which the complaint was fixed for hearing, the learned Magistrate cannot be

said to have committed any mistake in acquitting the respondent vide Section 256 of the Code. The impugned order is quite legal, proper and correct. It does not call for any interference. Hence, I pass the following order:-

O R D E R

The Criminal Appeal is dismissed.

[SANGITRAO S. PATIL]
JUDGE

npj/criapl95-2008