

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

CRIMINAL APPEAL NO. 185 OF 2017

* Punjabai d/o Trimbak Divekar ,
Age: 50 years, Occu-Agri.
R/o. Waghodi, Tq. Paithan
Dist.- Aurangabad

..... APPELLANT

(Original complainant)

V E R S U S

1. Navnath Bansi Lohare,
Age : 30 years, Occu- Agril.,
2. Zumbar Bansi Lohare,
Age : 32 years, Occ: Agril.,
Respondent No.1 & 2
R/o Waghodi Tq. Paithan,
Dist. Aurangabad
3. Bansi Rambhau Lohare,
Abated as per court order
dated 07.04.2017
4. The State of Maharashtra
Through Police Station, Paithan
Dist. Aurangabad

..... RESPONDENT

(Respondent Nos.1 to 3 -
original Accused)

...

Mr.U.M. Mhaske Patil, Advocate h/f
Mr. S.B.Ghatol Patil Advocate for Appellant.
Mr. D.A. Bide Advocate for respondent No.1 & 2
Mr.K.N. Lokhande. APP for the respondent/State

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CORAM : V.L.ACHLIYA, J

DATE : 28.06. 2017.

ORAL JUDEMENT :

1. By the present appeal, the appellant- original complainant has challenged the impugned order dated 11.12.2015 passed in Sum. Criminal Case No. 431/2011 by the J.M.F.C Paithan Dist. Aurangabad. By the impugned order the learned judge has dismissed the complaint and acquitted the accused by exercising powers under section 256 of the Code of Criminal Procedure.

2. Before advertng to appreciate the submissions advanced, it is necessary to consider the brief fact leading to filing of this appeal. The complainant had filed Criminal complaint under section 323,504,506 r.w. 34 of the Indian Penal Code as against the respondents/accused. On due consideration of the allegations made in the complaint and verification of the complainant the learned Judicial Magistrate First Class, Paithan pleased to issue process under section 323,504,506 r.w. 34 of the Indian Penal Code vide order dated 09.11.2011. Pursuant to the order passed the summons were issued and accused appeared in the matter. Since thereafter the case was adjourned for one or the other reasons. On 11.12.2015 the learned Magistrate passed the following order and dismissed the complaint. The impugned order reads as under :-

"Complainant and his counsel absent when called out repeatedly. Peruse record and roznama It appears that complainant is absent since long and

has not taken steps in order to proceed with the matter. More than sufficient time is given to complainant to take steps. The matter is old one. There is no point in keeping the matter pending without any further progress. Hence, in view of all above aspect the complaint is dismissed under section 256 of Code of Criminal Procedure. The accused is acquitted of the offence punishable under section 138 of Negotiable Instrument Act. His bail bonds stands canceled and surety is discharged. The proceeding is hereby closed."

3 The appellant has challenged the impugned order mainly on the ground that, order passed is glaring example for non application of the mind. It is pointed out that, the complaint filed by the complainant was for seeking prosecution and conviction of the accused for committing an offence punishable under section 323, 504,506 r.w. 34 of the Indian Penal Code. While passing the impugned order the learned Magistrate treated the complaint as it was filed under section 138 of the Negotiable Instrument Act and dismissed the complaint by making another observations to that effect.

4. I have heard the submissions advanced by the learned counsel for the appellant and respondents and further perused the record and proceeding.

5. In my view the impugned order is not sustainable in law. The case in hand is glaring example of non application of the mind. It reflects from the face of record that some draft order using blank spaces

such as case number and names of the parties kept ready and by putting the case number and names of parties in the blank spaces the order been signed by learned Judge and dismissed the complaint in exercise of power under section 256 of the Code of Criminal Procedure. The courts of the law are not expected to pass orders in such manner. It appears that before signing the orders the learned judge has not taken pains at least to examine as to whether the complaint filed is under section 138 of the Negotiable Instrument Act or otherwise. Without going through the record of the case and applying the mind, the impugned order has been passed. In this view the appeal deserves to be allowed and case needs to be remanded to trial court by setting aside impugned order. Hence, the following order.

ORDER

- I. Criminal Appeal stands abated against the accused/respondent No.3.
- II. Criminal appeal is allowed. The impugned order dated 11.12.2015 passed in Sum. Criminal Case No. 431/2011 by the Judicial Magistrate First Class Paithan District Aurangabad is hereby set-aside. The case is restored to its original number.
- III. The case is remanded to the trial court with direction to proceed with the case from the stage prior to dismissal of the complaint.
- IV. Parties are directed to appear before the trial court on 17th

July 2017.

- V. The trial court is directed to expedite the hearing of the case and dispose of the complaint, as far as possible, within period of six months w.e.f 17th July 2017.
- VI. Parties are directed to co-operate with the Court.
- VII. In case the complainant fails to appear and prosecute the complaint, on 17th July 2017 the court will be at liberty to pass appropriate order as deemed fit and proper.
- VIII. Record and proceeding of case be sent back to the trial court and ensure that same reaches to trial court before 17th July 2017.

[V.L.ACHLIYA, J.]