

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.967 OF 2001

Anant Tatyaba Sawant
Indian Inhabitant, Hindu, aged
61 years, residing at B-15/115,
Chitrarnjan Nagar, Rajawadi,
Ghatkopar (East), Bombay 400077 .. Appellant

Versus

1] State of Maharashtra

2] Smt. Vimal Madhukar Shingare,
Indian Inhabitant, an adult,
Hindu, residing at E.S.I.S.
Hospital Quarters, Building
No.13, Room No.2, Wagle
Estate, Thane .. Respondents

None for appellant
Mr. P.H.Gaikwad, APP for State.

CORAM : N.M.JAMDAR, J.

DATE : 28th June 2017.

ORAL JUDGEMENT:-

The appellant has challenged the order passed by the
learned Metropolitan Magistrate, Vikhroli, Mumbai dated 1st
November 2001 dismissing the complaint filed by the appellant

under section 138 of Negotiable Instruments Act (N.I.Act for short) for default. The appellant filed a complaint under section 138 of the N.I. Act on the ground that a friendly loan of Rs. 2 lakhs was given to the respondent. The respondent returned the same by way of cheque, which was returned dishonoured when presented and consequently a legal notice was issued on 21st February 2000. The complaint was filed on 10th April 2000.

2] On 1st November 2001, the learned Magistrate, after observing that the appellant was absent when the matter was called out, and the appellant had remained absent continuously and no steps have been taken to prosecute the complaint, dismissed the complaint. An application was made by the appellant for restoration of the complaint. This application was also rejected, since the appellant did not remain present. The complaint was filed on 10th April 2000. The complainant thereafter has filed this present appeal.

3] The appeal was admitted on 13th June 2002 and, thereafter, the appeal appeared on board on 20th August 2015, 5th October 2015, 9th October 2015, 27th November 2015 and 16th June 2017.

On none of these dates the appellant has remained present. On 9th October 2015, this Court observed that the adjournment is granted by way of last chance.

4] The appellant had sought to set aside the order of acquittal which was passed in view of dismissal of complaint for default. In the appeal memo, the appellant has put forth certain legal grounds and has sought to urge that though the complainant has remained absent, the court must consider whether personal attendance of complainant was essential on that date for progress of case. The appellant, however, has not given any satisfactory explanation regarding his absence on the dates for which the complaint and restoration were dismissed.

5] It is clear from the roznama that on the dates preceding the dismissal of the complaint, the appellant had not remained present. This conduct of the appellant has continued even in this appeal as continuously the appellant is absent. The least the appellant could have done is to prosecute the present appeal diligently. This is an abuse of the process of law. The conduct of the appellant in this

appeal fortifies the view taken by the learned Magistrate and I find no error in the order passed by the learned Magistrate dismissing the complaint for default for lack of any cogent explanation. The appeal is accordingly dismissed

(N.M.JAMDAR, J.)