

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

CRIMINAL APPEAL NO.859 OF 2017

Shri Hanumant Bapu Yadav

..Applicant

v/s.

Bhagwan Abaji Khutwad & Anr.

..Respondents

Mr. Y.B. Purwant i/b. V.V. Purwant for the Applicant.

Mr. A.S.Khoratmol for the Respondent No.1.

Mr. P.H.Gaikwad APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 06, 2017.**

P.C.

1. Heard.
2. Admit.
3. With consent of the parties, the appeal is taken up for hearing on merits at the stage of admission.
4. Heard the learned Counsel for the respective parties. The records reveal that the appellant herein had filed a complaint under Section 138 of Negotiable Instruments Act. The said complaint came to be dismissed on 1st November, 2014 as neither the complainant nor his advocate were present in the Court. The extract of roznama which is placed on record indicates that the appellant herein had

remained present in the Court on most of the hearings except on the last two hearings.

5. Considering the above facts, in my considered view, the order of acquittal needs to be set aside and an opportunity needs to be given to the parties to contest the matter on merits. Hence the order.

- i) The appeal is allowed with cost of Rs.10,000/- to be paid to the respondent within three weeks.
- ii) Impugned Order dated 1st November, 2014 is quashed and set aside. Criminal complaint No.3019 of 2012 is restored to the file.
- iii) Both the parties are directed to appear before the JMFC, Panvel, on 1st November, 2017 at 11.00 a.m.

(ANUJA PRABHUDESSAI, J.)