

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

CRIMINAL APPEAL NO.893 OF 2017

M/s. Mayur Tempo
(Sole Proprietor Eknath Laxmanrao
Mahamulkar)

...Appellant

Versus

M/s. Sonal Engineering Works
(Proprietor Mahadev Vishnu Shelar)
& Anr.

...Respondents

.....

Mr. Bhupesh V. Samant for the Appellant.

Mr. P.S. Gole for the Respondent No.1.

Mrs. N.S. Jain, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st NOVEMBER, 2017.

P.C.:-

Not on board. Taken on board.

2. Heard the learned counsels for the respective parties. With consent of both the parties matter is taken up for final hearing.

3. The Appellant herein was a complainant in S.C.C. No. 2077 of 2014 filed before the learned Judicial Magistrate, First Class, Satara for offence punishable under Section 138 of the Negotiable

Instruments Act. The learned Magistrate had recorded verification statement on 29th February, 2016 and issued process by order dated 9th March, 2016. It appears that the complainant had remained absent from 7th July, 2016 and had also failed to take steps to serve the Respondent-accused. The learned Magistrate therefore dismissed the complaint for non prosecution and acquitted the accused.

4. The Appellant has stated that he was under the impression that his Advocate would pursue the matter since it was only for service of summons. It is stated that Advocate for the Appellant could not attend the hearing as he was suffering from Typhoid.

5. Considering the above facts and circumstances in my considered view the order of dismissal needs to be quashed and set aside. Hence, the following order:-

(a) Appeal is allowed with cost of Rs.10,000/- to be paid to the Respondent.

(b) The impugned order dated 10th November, 2016 is quashed and set aside and Criminal Case No.2077 of 2014 is restored to file.

(c) Both parties agree to appear before the Trial

Court on 20th November, 2017 at 11.00 a.m.

6. All concerned to act on an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)