

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.179 OF 2018

Siddharth Jaiwantrao Shinde
Age: 39 years, Occu.:Proprietor,
Bhumi Agri Tec, Company, Dhule
R/o. Plot No.5, Bharat Nagar,
Devpur,Dhule, Ta. & Dist. Dhule

= APPELLANT
(Orig. Complainant)

VERSUS

Sachin Dattatray Navle
Age :35 years, Occu.:Proprietor,
Manmandir Agro Services,
R/o. Akole Wadgao,
Tq. Vaijapur, Dist. Aurangabad
AND
at post Akole Wadgaon,
Tq. Gangapur,
Dist. Aurangabad

=RESPONDENT
(Org. Accused)

Shri Manish V. Bhamre, Advocate for Appellant;

Shri V.S.Janephalkar, Advocate for Respondent.

CORAM : P.R.BORA, J.
DATE : 20th March, 2018

ORAL JUDGMENT:

1) Heard learned Counsel for appellant and
learned Counsel for sole respondent.

2) Admit. By consent, taken up for final disposal at the admission stage.

3) Criminal Complaint under Section 138 of The Negotiable Instruments Act, (for short the Act) filed by the present appellant, has been dismissed by the trial court for non-prosecution.

4) It is the contention of learned Counsel for appellant that throughout the appellant was quite diligent in prosecuting his matter, however, on 16th August, 2017, because of some communication gap between the complainant and his counsel, he could not attend the aforesaid case and the counsel appearing for him was also unable to attend the court and in the circumstances, the complaint has been dismissed for want of taking steps by the appellant.

5) The learned Counsel submits that the appellant undertakes to promptly prosecute the complaint before the trial court without seeking

any adjournment. The learned Counsel further submits that though all necessary steps were taken by the complainant, the respondents could not be served and in such circumstances, the complaint has been dismissed. The learned Counsel submits that in the circumstances, an opportunity needs to be given to the complainant to prosecute the complaint on merits.

6) Learned Counsel appearing for respondent has opposed for accepting the request made on behalf of the appellant. The learned Counsel submits that the Trial Court has rightly rejected the complaint for not taking necessary steps by the original complainant and no interference is required in the impugned order. I am unable to accept the argument advanced by the learned counsel for the respondent for the reason that from record of the trial court it appears that despite service of notice, the present respondent, i.e. accused before the trial court, did not appear before the Court and the original complaint was required to file an application

seeking further orders of issuance of Non-bailable warrant against him. Apart from the facts, as aforesaid, the core fact remains that the complainant has not received the opportunity to prosecute his complaint on merits. Even if it is accepted that there was some lapses on the part of the complainant in taking prompt steps, doors cannot be closed for the complainant. Learned Counsel for respondent submitted that appropriate costs may be awarded to the respondent.

7) After having considered the submissions and the material on record, I am inclined to allow the present appeal. Hence, the following order, -

ORDER

i) The impugned order dated 16th August, 2017 passed by learned JMFC, Dhule in STCC No.177/2014 is quashed and set aside;

ii) The STCC No.177/2014 is

restored to its original file subject to costs of Rs.2,000/- to be paid by the present appellant to the respondent within four weeks from today;

iii) The appellant and the respondent shall appear in the aforesaid STCC No.177/2014 on 4th April, 2018;

iv) The appeal stands allowed in the aforesaid terms.

(P . R . BORA)
JUDGE

bdv/