

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

CRIMINAL APPLICATION NO. 7 OF 2017

Ujjain Pratap Singh	... Applicant
Vs.	
Durgash Singh and another	... Respondents

...

Mr. Rajendra Singh Saluja for applicant.
Mrs. N.S. Jain, APP for State.

...

CORAM : PRAKASH D. NAIK, J.
DATE : 19th JUNE, 2018.

P.C.

1. None appears for the respondent No.1 although they served. The applicant has also served respondent No.1 by way of private notice and tenders affidavit of service which is taken on record.
2. The applicant has preferred this application under Section 482 of Code of Criminal Procedure, challenging the order dated 22nd September, 2015 passed by the learned Metropolitan Magistrate, 44th Court Andheri bearing Criminal Complaint No. 1906/SS/2014.
3. The complainant and his advocate filed the complaint under Section 138 of Negotiable Instrument Act on 4th July, 2014. Thereafter, the case was kept for verification on 8th August, 2014.

On that date petitioner was not present before the court and the complaint was adjourned to 28th November, 2014. The complainant was again absent, hence case was adjourned to 16th February, 2015. On 16th February, 2015 the petitioner was present alongwith his advocate. However verification statement was not recorded and case was adjourned to 27th April, 2015 for recording verification statement. On the subsequent dates i.e 27th April, 2015, 1st July, 2015 and 22nd September, 2015, the complainant and his advocate were not present before the Trial Court.

4. It is submitted that the petitioner was admitted in hospital on account of various ailments. The copy of the medical certificates is annexed to the application vide Exh.C.

5. The trial court on 22nd September, 2015 passed order that the complainant and his advocate are absent and there is no progress in the complaint and hence the complaint was dismissed for want of prosecution.

6. Taking into consideration the reason assigned by the petitioner for his absence and considering the factual aspects, opportunity ought to be given to the petitioner to pursue his complaint on merits. In the interest of justice and to pursue his complaint, the complainant can be given opportunity to prosecute

his complaint. Hence, I pass the following order.

ORDER

- i) Order dated 22nd September, 2015 passed by the learned Metropolitan Magistrate 44th Court Andheri bearing Criminal Case No. 1906/SS/2014 dismissing the complaint for want of prosecution is set aside and the complaint is restored;
- ii) The trial Court is directed to proceed with the complaint in accordance with law;
- iii) The petitioner is directed to appear before the Trial Court on 16th July, 2018 at 11 am alongwith copy of this order.
- iv) The application stands disposed of.

(PRAKASH D. NAIK, J.)