

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 131 OF 2015**

**BIOVISION CORPORATION )  
through its Partner Mr.Siddhart Sable )...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA & OTHERS )...RESPONDENTS**

Mr.Satyavrat Joshi i/b. Vidhi Partners, Advocate for the Appellant.

Mr.Prashant Jadhav, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 14<sup>th</sup> FEBRUARY 2018**

**ORAL JUDGMENT :**

1            Heard finally in view of the order dated 9<sup>th</sup> February 2016 passed by this court, by which notice of final hearing of this appeal was directed to be issued to respondent nos.2 to 5/original accused, which according to the noting of the Registry, is duly served on these respondent nos.2 to 5, but they remained absent today also.

2            This is an appeal by original complainant challenging the order dated 13<sup>th</sup> February 2013 passed by the learned Judicial Magistrate First Class, Pune, thereby dismissing the complaint filed by the appellant/original complainant in default and acquitting respondents nos.2 to 5 of the offence punishable under Section 138 of the Negotiable Instruments Act in Summary Criminal Case No.4303 of 2007.

3            Facts, in brief, are thus :

- (a) The appellant/original complainant, in the year 2007, had preferred an complaint alleging commission of the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act by respondent nos.2 to 5, with an averment that in discharge of legally enforceable debt, they had issued three cheques amounting to Rs.5 lakh, but those cheques were dishonoured with a reason “funds insufficient” and despite receipt of statutory notice, they failed to pay the amount demanded within a period of fifteen days from the

date of receipt of the statutory notice. After recording verification statement and hearing the appellant/original complainant, the learned Judicial Magistrate First Class, Pune, on 28<sup>th</sup> March 2007, directed issuance of process against respondent nos.2 to 5/ original accused in the said Summary Criminal Case No.4304 of 2007.

- (b) After recording plea, it is seen that on 8<sup>th</sup> July 2010, the appellant/original complainant adduced evidence on affidavit and in his further chief examination, some documents were also exhibited. On that day, respondent nos.2 to 5 were absent, and therefore, the complaint was adjourned for cross-examination of the witnesses for the complainant. Subsequently, it is seen that right from 24<sup>th</sup> January 2011, on almost all occasions up to 9<sup>th</sup> January 2013, the parties were in appearance. However, the complaint was adjourned from time to time for cross-examination of the witnesses for the complainant. It is seen from the roznama that on some occasions, adjournment was

sought by the complainant and those applications were allowed by imposing costs. The roznama further shows that on 9<sup>th</sup> January 2013, the complaint was adjourned to 13<sup>th</sup> February 2013 and on that day, the complainant i.e. the appellant herein, as well as his advocate remained absent. Accordingly, the learned trial Magistrate passed an order on the very same day i.e. on 13<sup>th</sup> February 2013 on the complaint Exhibit 1 and observed that in the old pending complaint, the complainant is not interested to proceed further and therefore, the complaint came to be dismissed by acquitting the respondent nos.2 to 5/accused. This order is impugned in the instant appeal.

4           As indicated in the foregoing paragraphs, way back on 9<sup>th</sup> February 2016, this court had issued notice of final disposal of the appeal to contesting respondent nos.2 to 5 and despite service of said notice, as per noting of the Registry, respondent nos.2 to 5 are absent today also.

5           I have heard Shri Satyavrat Joshi, the learned advocate appearing for the appellant/original complainant. He vehemently argued that primary function of the court is to adjudicate the dispute on its own merits. In the case in hand, it is seen that, on several occasions the complaint was adjourned for cross-examination of the witnesses for the complainant, but the same was adjourned without noting the reasons for adjournment. In the light of this history going on for years together, the learned trial court was not justified in dismissing the complaint on one default of the complainant.

6           I have also heard the learned Additional Public Prosecutor.

7           I have carefully considered the submissions so advanced and also perused the roznama / order sheets reflecting progress of the complaint right from its inception in the year 2007. As indicated in the foregoing paragraphs, evidence on affidavit on behalf of the appellant/complainant came to be

tendered way back on 8<sup>th</sup> July 2010, and thereafter, the complaint came to be adjourned, sometimes without noting the reasons for adjournment and sometimes at the instant of the parties. However, atleast from 21<sup>st</sup> March 2011, as seen from the roznama, the complainant i.e. the appellant and his advocate were remaining present before the court throughout till 9<sup>th</sup> January 2013. They were then absent on the next date i.e. on 13<sup>th</sup> February 2013, and therefore, the complaint came to be dismissed by acquitting the respondent nos. 2 to 5 for the offence punishable under Section 138 of the Negotiable Instruments Act.

8            Considering the nature of offence and the fact that for years together, the complainant as well as his counsel were attending the court regularly, I am of the considered opinion that, this mode of dismissing the complaint and acquitting the accused adopted by the learned trial Magistrate is not justified. Therefore, the order :

**ORDER**

- i) The appeal is allowed.

- ii) The impugned order dated 13<sup>th</sup> February 2013 passed by the learned Judicial Magistrate First Class, Pune, in Summary Criminal Case No.4304 of 2007 between the parties is quashed and set aside.
- iii) The complaint is restored to the file of the learned Judicial Magistrate First Class, Pune, with a direction to dispose it of according to law.
- iv) The appellant i.e. the original complainant to appear before the learned Judicial Magistrate First Class, Pune, on **16<sup>th</sup> March 2018.**
- v) Parties to act on authenticated copy of this order.

**(A. M. BADAR, J.)**