

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.94 OF 2015

Mr. Devendrappa Malligawda	...Applicant
V/s.	
Mr. Deepak Vikram Nalawade & Ors.	...Respondents

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Mr. Suhas S. Inamdar, Advocate for the Applicant.

Mrs. M.R. Tidke, APP for the Respondent/State.

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CORAM : A.M.BADAR, J.

DATED : 9th OCTOBER 2018.

P.C. :

1. Despite of service, respondent No.1/original accused was absent. Therefore, notice of final disposal was directed to be issued vide Order dated 26th September 2017. Thereafter, respondent No.1 appeared through his counsel on 25th September 2018. However, the matter was adjourned by consent of parties to 9th October 2018. Today, none appears for respondent No.1.

2. Heard the learned Counsel appearing for the

applicant/original complainant. Leave, as prayed, is granted. Admit. Heard forthwith in view of notice of final disposal and as short controversy is involved in the instant appeal.

3. The learned counsel for the appellant/original complainant argued that for securing presence of the respondent No.1/original accused, bailable warrant was issued on 19th March 2013. On 21st May 2013 it was not served and hence the case was adjourned to 24th July 2013. However, abruptly on 24th July 2013 though the bailable warrant was not executed, the complaint came to be dismissed by resorting to the provisions of Section 256 of the Code of Criminal Procedure.

4. The learned APP appears for the respondent No.2/State.

5. The appellant/original complainant had filed a complaint alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. He averred that he had advanced handloan of Rs.2,50,000/- to the respondent No.1. For repayment of part of that handloan, the respondent No.1 had given a cheque of Rs.50,000/- to him, which was presented to the banker and was returned with remark "Not arranged For".

6. After perusal of the complaint and the affidavit of the appellant/original complainant, the learned Chief Judicial Magistrate Solapur had directed issuance of process. However, the respondent No.1/accused could not be served. Therefore, on 19th March 2013, the learned trial Court directed issuance of bailable warrant. The next date fixed for hearing was 21st May 2013. On that day, as seen from the Roznama, the bailable warrant was not served. This implies that it was not returned to the concerned Court after its execution. The next date given by the learned trial Court was 24th July 2013. On that day, by recording absence of the complainant and his advocate, the complaint came to be dismissed by resorting to the provisions of Section 256 of the Code of Criminal Procedure and the respondent No.1 came to be acquitted.

7. When the learned trial Court had come to the conclusion that for securing presence of the respondent No.1/original accused, bailable warrant needs to be issued and when that bailable warrant was actually issued, but not served, there was no propriety in insisting attendance of the appellant/original

complainant. The complaint ought not to have been dismissed by the learned trial Court when the bailable warrant issued by it for securing presence of the respondent No.1/original accused was not even returned back to it either by executing or by necessary endorsement thereon.

8. In this view of the matter, the impugned order of dismissal of the complaint cannot be sustained. Therefore, the order.

- : ORDER : -

- i) The appeal is allowed.
- ii) The impugned order dated 24th July 2013 passed by the learned Judicial Magistrate (Municipal Court), Solapur, below Exhibit 1 S.T.C.No.1088 of 2007 between the parties quashed and Set aside.
- iii) The said complaint is restored to the file of the concerned Court for disposal according to law.
- viii) The appeal stands disposed off accordingly.

(A.M.BADAR J.)