

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 71 OF 2016
Gajanan S.Barge vs. Mahindra Ashok Gire and anr.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. R.C. Barge for the Applicant.

Mr. V.V.Gangurde, APP. for Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 3rd April, 2018

P.C.

1. This is an application under Section 378(4) of the Cr.P.C. for leave to file appeal against the Order dated 24.7.2015 passed by the learned Judicial Magistrate First Class, Court -2, Satara in Summary Criminal Complaint No.2571 of 2014 thereby dismissing the complaint of the applicant filed under Section 138 of the Negotiable Instruments Act, under Section 256 of the Cr.P.C., acquitting respondent No.1 from the said offence.

2. Heard the learned counsel for the applicant and the learned APP. for the State.

3. The note put up by the registry mentions that, respondent No.1 is duly served. Despite service none appears for respondent No.1.

4. The learned counsel for the applicant submitted that, due to communication gap between the applicant and his Advocate, the applicant could not remain present before the Trial Court on last two consecutive occasions and therefore, the Trial Court was pleased to dismiss the complaint under Section 256 of the Cr.P.C. He further on instructions submitted that the applicant will hereinafter attend the Trial Court proceedings without any default till its conclusion and also will not seek any adjournment before the trial Court. The said statement is accepted.

5. In view of the above and for the reasons stated in the application I am inclined to quash and set aside the impugned order dated 24.7.2015 passed by the Trial Court and restore the complaint to its file subject to condition that the applicant shall pay a cost of Rs.2000/- to the High Court Legal Services Committee within a period of three weeks from today.

6. It is made clear that payment of costs shall be the condition precedent for restoration of the complaint to the file. The applicant will have to produce the receipt of payment of costs before the Trial Court on the first date of hearing.

7. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)