

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

CRIMINAL APPEAL NO.240 OF 2018

Dilip Traders,
Through its Proprietor,
Dilipkumar S/o Papalal Jaiswal,
Age: 57 years, Occ: Business,
R/o Nathbaba Lane, Sadar Bazar,
Jalna, Tal. and Dist. Jalna

...Appellant/Complainant

VERSUS

Parmeshwar s/o Kaduba Hiwale,
R/o At village Asarkheda (Devi)s,
Post : Doangaon, Taluka Badnapur,
District. Jalna

... Respondent/Accused

Mr. Rupesh A. Jaiswal, Advocate for the appellant

CORAM : S.M.GAVHANE, J.

DATED : 02.04.2019

ORAL JUDGMENT :-

1. Heard.

2. Admit, taken up for final hearing. None present for the respondent/accused though served with the notice of appeal.

3. The appellant/original complainant has challenged the order dated 12/09/2017 in STC No.1394 of

2014 filed by him against the respondent/accused under Section 138 of the Negotiable Instruments Act, passed by the Judicial Magistrate First Class (Court No.6), Jalna dismissing the said case and acquitting the respondent/accused of the aforesaid offence.

4. Facts relevant to decide this appeal in short are that, the appellant filed aforesaid complaint case against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act on 25/07/2014, alleging that the respondent had given a cheque dated 19/05/2014 bearing No. 036780 of Rs.99,175/- towards the discharge of legally enforceable debt due to the respondent and the said cheque was dishonored. The learned Magistrate issued the process under Section 138 of the Negotiable Instruments Act against the respondent on 01/08/2014.

5. It appears that thereafter, no summons/notice was served on the respondent. Therefore, on 12/09/2017 the learned Magistrate passed impugned order dismissing the complaint, which is as under:

"The complaint is filed on 05/08/2014. Perused the record and its Roznama. Today, the

complainant and his advocate remained absent when called out repeatedly till 05-45 p.m. Since 18/12/2014, the case is posted for appearance of the accused. The complainant has not taken any step since 13/10/2016 against the accused. Yet, the complainant did not appear today. Sufficient opportunities are given to complainant for taking steps. It seems that complainant is not interested to proceed with the matter. In such case, no purpose will be served in keeping the file on record. Hence, following order is passed-

ORDER

1. The complaint is dismissed.
2. The accused is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act vide section 256 of the Code of Criminal Procedure."

6. Aggrieved by the aforesaid order, this appeal by the appellant, Mr.Jaiswal, learned counsel for the appellant submitted that the appellant has made all the compliances as required under law before filing case against the respondent. However, after filing of the case, the learned counsel for the appellant did not inform the dates in the proceeding to the appellant and therefore, the appellant could not attend the Court to make compliance in the case or to take steps to serve notice on the respondent. As such, according to learned counsel for the appellant, it is not the case that the appellant willfully remained absent in the Court and failed to take steps against the respondent. It is

further submitted that amount of cheque is above rupees One lakh which is huge amount. So also, it is submitted that it was possible for the learned Magistrate to adjourn the case for taking steps by the appellant. Therefore, according to learned counsel for the appellant to give an opportunity to the appellant to take steps against the respondent and to have decision on merits in the case, impugned order be set aside by allowing the appeal.

7. On perusal of the impugned order, it appears that since 18/12/2014 case was adjourned from time to time for taking steps by the appellant against the respondent and the appellant did not take steps since 13/10/2016 against the respondent and even on the date of impugned order i.e. on 12/09/2017, the appellant did not appear in the Court. It is true that the appellant did not take steps against the respondent for a long time, as it appears from the impugned order, however, considering the submissions made by the learned counsel for appellant that as the counsel for the appellant did not inform the dates in the case to the appellant from time to time the appellant could not take steps in the

case and for giving an opportunity to the appellant to take steps as argued by the learned counsel for the appellant and having regard to the fact that in the circumstances present in the case, it was possible for the learned Magistrate to adjourn the case, the order under challenge is not sustainable and the same is liable to be set aside, in the ends of justice by allowing the appeal. Therefore, in the result, following order is passed:

ORDER

(i) Appeal is allowed.

(ii) The impugned order dated 12/09/2017 passed by the Judicial Magistrate First Class (Court No.6), Jalna in STC No.1394/2014 dismissing the said complaint and acquitting the respondent/accused is quashed and set aside.

(iii) The said case bearing STC No. 1394/2014 is restored to its original position with a direction to the appellant/original complainant to take steps against respondent/accused to serve notice in the case on the respondent without fail.

(iv) The learned Magistrate is directed to dispose of the case within six months, after service of summons/notice on the respondent/accused.

(v) Learned counsel for the appellant undertakes that the appellant/complainant would appear before the learned Magistrate in the case on 29/04/2019.

[S.M.GAVHANE, J.]