

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 16 OF 2019

CRESENCIA PEREIRA, THR. HER POA,
RANDAL FERNANDES., ... Appellant

Versus

ABHAY DATTI GOMES., ... Respondent

Mr. Prashil Arolkar, Advocate for the Appellant.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 18th July 2019

P.C.:

By an order dated 01.04.2019 this Court has granted leave to appeal to the appellant as his complaint under Section 138 of the Negotiable Instrument Act (N.I.Act) came to be dismissed by the learned Trial Court due to his absence on 06.08.2018.

2. Heard Mr. Arolkar, learned Counsel for the Appellant.

3. The appellant has filed O.A.No.685/2017/D in the Court of Judicial Magistrate, First Class, 'D' Court, Panaji,Goa under Section 138 of the N.I.Act against the respondent for dishonour of cheque amounting to Rs.2,00,000/-. It is submitted that despite due service upon respondent/accused, he remained absent. The complainant too due to some unavoidable reason

could not remain present and therefore, the learned Magistrate, after granting only two opportunities, dismissed the complaint and acquitted the accused.

4. It is submitted by the learned Counsel for the appellant that the complaint came to be dismissed only because of the negligence on the part of the advocate appearing for the applicant before the Trial Court, for which the party should not suffer.

5. Normally, it is desirable to adjudicate the complaint on merits instead of dismissing the same in default. In order to meet the ends of justice, the impugned order therefore, is required to be quashed and set aside.

6. As such, the impugned order passed by the learned Magistrate is quashed and the original complaint is restored to the file of the Judicial Magistrate, First Class by same number.

7. The learned Judicial Magistrate, First Class shall proceed further in accordance with law. However, the complainant is also directed to be diligent in prosecuting the complaint. The complainant is saddled with cost of Rs.1000/- to be deposited in the Trial Court within a week from today. The complainant shall remain present before the Trial Court on 19.08.2019 at 10.00 a.m.

8. Appeal stands disposed of on the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

MF/-