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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No. 359 OF 2016
(LEAVE TO APPEAL)

Shri Pratap Dadaso Sawant	...Applicant
Vs.	
The State of Maharashtra and Anr.	...Respondents

Mr. Arjun Sanjay Pawar for Applicant
Mr. S.S. Pednekar -APP
Mr. Rupesh Atul Zade for Respondent No.2

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : FEBRUARY 14, 2019

P.C.:

1. This is an application (Leave to Appeal) filed by the original Complainant, challenging the order dated 7th April, 2016 passed by the 4th Judicial Magistrate, First Class, Baramati in C.C. No. 604 of 2012 thereby dismissing the complaint as contemplated under Section 256 under the Code of Criminal Procedure, 1973. It is a matter of record that the Complainant had initially filed Criminal Complaint bearing CC No.964 of 2005, CC No. 233 of 2005 and CC No. 2725 of 2004 against Respondent No.2 for offences punishable under section 138 of the Negotiable Instruments Act. On 27.1.2011, the consent terms were drawn between the parties and while drawing the terms for amicable settlement, Respondent no.2 herein issued six cheques, out of which, 5 cheques were for Rs,20,000/- and one cheque dated 20.02.2012 was for Rs.25,000/-. It is a matter of record that two cheques were dishonoured, one for Rs. 25,000/0 and other for Rs.20,000/- . The

Complainant was, therefore, constrained to file a criminal complaint No.604 of 2012 after issuing statutory notice under section 138 of the Negotiable Instruments Act.

2. Upon perusal of the Roznama, it appears that the complainant has chosen to remain absent from 22nd February, 2013. Finally, on 7th April, 2016, the complaint was dismissed for want of prosecution. In fact, it was incumbent upon the complainant to remain present.

3. The learned counsel for the Complainant / Appellant submits that the summons could not be served upon the Respondents and the report was called and, therefore, the complainant and his advocate did not remain present. In fact, it is no ground for restoring the complaint. It is apparent that the complainant was at fault. The learned counsel for the Appellant placed his reliance upon the order dated 12th October, 2018 by which the complaint was restored by setting aside the order dated 7.4.2016.

4. It is in view of this, the complaint deserves to be restored, upon imposing of costs. Hence the following order:

ORDER

- (i) The Application (Leave to appeal) is allowed and disposed of.
- (ii) The impugned order dated 7.4.2016 passed by the Learned 4th Judicial Magistrate, First Class, Baramati in Summary Criminal Case No. 604 of 2012 is quashed and set aside.
- (iii) Criminal Case no. 604 of 2012 be restored to the concerned Court on depositing the costs of Rs. 5,000/-.

- (iv) The Complainant shall remain present before the Court along with the Advocate on 25th February, 2019 and co-operate in the proceedings.
- (v) The Learned Magistrate shall not grant any unwarranted adjournment to the advocate for the complainant as well as to the advocate for the defence.
- (vi) The recording of evidence shall be concluded by 30th of July, 2019.
- (vii) The records and proceedings in Summary Criminal Case No. 604 of 2012 pending before the Judicial Magistrate, First Class, Baramati be remitted back to the Court within one week from today.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam