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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 490 OF 2019**

Sangram Raghunath Kakade

.....Applicant

V/s.

Dattatraya @ Bhausahab Dadasaheb Dorage
and another

.....Respondents

Mr. Vivek V. Salunke for the applicant

Mr. Kuldeep U. Nikam for respondent no. 1

Mr. A. R. Kapadnis APP for the State

CORAM : NTIN W. SAMBRE, J.**DATE : NOVEMBER 27, 2019.****P.C.**

Heard.

2 Before the Magistrate, in a proceedings taken out for an offence punishable under Section 138 of the Negotiable Instruments Act, on March 5, 2018, the Rozanama demonstrate that applicant/complainant and respondent/accused were heard through their respective counsel and the matter was adjourned for Judgment

to March 12, 2018. There is little over-writing in the date, March 12, however, the contentions are, in the Judgment impugned, Magistrate proceeded on the basis that applicant/complainant has not argued the matter.

3 As such, according to learned counsel for the applicant, Judgment impugned needs to be set aside by directing the Magistrate to decide the complaint afresh from the stage of final hearing.

4 Prayer is opposed on the ground that observations made in Rozanama dated March 5, referred above and in observation in para 5 is correct.

5 This Court need not to go into the controversy, particularly when *prima facie* it is demonstrated that either the observation in para 5 of the impugned Judgment about non appearance of the complainant's advocate is correct or else, complainant was heard on March 5.

6 In the aforesaid background, Judgment of acquittal dated March 12, 2018 delivered by the Judicial Magistrate First Class, Pune in S.C.C. No. 19402 of 2015 warrants interference.

7 As such, for granting fresh opportunity of hearing to the parties from the stage of final hearing of the complaint, present appeal needs to be allowed. Judgment impugned is set aside.

8 Parties here agreed that they shall appear before the Magistrate on 16/12/2019 and shall work out the matter from the stage of final argument.

9 With above observations, application for grant of leave stands allowed.

[NITIN W. SAMBRE, J.]