

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.546 OF 2019

Mrs.Minal Satish Jadhav,
Aged 26 years, Occu.Nil,
R/o.C/o.Raghunath Changdev Kakad,
At N-53, SF-4, 32/10, Uttam Nagar,
CIDCO, Nashik, Taluka
District Nashik.

... **Applicant**

Versus

1. Shri.Madhukar Dattatray Jadhav
Aged 55 years, Occu. - Service,
R/o. Plot No.60, Room No.1,
Sai Raj Row Houses, Behind
Mayur Hospital, I.T.I. Ambad
Link Road, Kamatwade, Taluka
District Nashik.

2 State of Maharashtra
Through Ambad Police Station. ... **Respondents**

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Mr.Anil S. Andhale, Advocate for the Applicant.

Ms.Avanti Inamdar h/f. Mr.Rameshwar N. Gite, Advocate for the
Respondent No.1.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent
No.2/State.

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CORAM : A.M.BADAR J.

DATED : 7th JANUARY 2020.

ORAL JUDGMENT :

1. Heard.

2 Rule. Rule returnable forthwith.

3 By these application, the applicant/original complainant is challenging the Order dated 08/01/2019 passed by the learned Judicial Magistrate First Class, Nashik thereby rejecting her complaint for the offence punishable under Section Negotiable Instruments Act, 1881 for want of prosecution.

4 Heard both sides. The learned Counsel appearing for respondent No.1/original accused, opposed the application by contending that sufficient opportunity was granted to the petitioner/original complainant for adducing evidence and as the evidence is not adduced, the complaint came to be dismissed for want of prosecution. She drew my attention to adjournment application.

5 I have heard the submissions so advanced and also perused the impugned Order dated 08/01/2019 passed below Exhibit 1 dismissing the complaint for want of prosecution.

6 The complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was fixed for recording evidence for the first time on 18/05/2018. On that day, the learned trial Magistrate was busy in passing Judgment in SC

No.3115 of 2014 and, therefore, the subject complaint was adjourned to 29/06/2018. On that day, the learned trial Magistrate had been to the Juvenile Justice Board on deputation and, therefore, the subject complaint was adjourned to 14/07/2018. It was then sent to the Lok Adalat and as it was not settled, it was returned to the concerned Court on 17/09/2018. Though both the learned Counsels were appearing before the learned trial Magistrate, it was adjourned to 01/11/2018. On 01/11/2018, both the parties were absent and, therefore, the complaint was adjourned to 08/01/2019. On 08/01/2019, the complainant through her Advocate filed an application for adjournment (Exhibit 17) and the learned trial Magistrate rejected the same by recording a reason that sufficient opportunities are already granted to the applicant/complainant. Consequently, by passing Order below Exhibit 1 on 08/01/2019 itself, the complaint came to be dismissed.

7 The chronology of events happened during pendency of the complaint as recorded in foregoing paragraph from the Order sheet does not show that sufficient opportunity of adducing evidence was granted to the petitioner by the learned trial Magistrate. Primary function of the Court is to adjudicate the disputes on their own merits rather than adhering to the technicalities of law. The impugned Order is, therefore, unsustainable and, as such, I proceed to pass the following Order :

ORDER

- (i) The application is allowed.
- (ii) The impugned Order passed below Exhibit 1 dismissing the complaint for want of prosecution on 08/01/2019 is quashed and set aside.
- (iii) The learned trial Magistrate is directed to decide the complaint on its own merits by following due process of law.
- (iv) The application is disposed of accordingly.

(A.M.BADAR, J.)