

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (APPA) NO. 337 OF 2019**

Vinod s/o Vinayak Jane

..vs..

Ajmatkha Sahebkhya Pathan

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Shri S.S. Shingne, Advocate for appellant.

Shri K.J. Topale, Advocate for respondent.

**CORAM : VINAY JOSHI, J.**

**DATED : 08/01/2020**

Heard.

2. The appellant/original complainant is seeking leave in terms of Section 378(4) of the Criminal Procedure Code to file appeal against the order of acquittal. By consent matter is taken for final disposal at this stage only.

3. The appellant has initially filed private complaint alleging that the respondent has committed an offense punishable under Section 138 of the Negotiable Instruments Act, 1881. The appellant has filed evidence affidavit and the matter was for cross-examination on 26.09.2018. On that day, the appellant moved an application at Exhibit-32. The said application was requesting to Court to accept certain documents which he has filed on 20/09/2018. On said application, the respondent-accused put his say, but, it appears that said application was not decided. On the same day, the accused has also filed another application at Exhibit-33 requesting to the Magistrate to dismiss the complaint since the

appellant is absent. In the wake of such position the learned Magistrate vide impugned order, has dismissed the complaint due to absence of complainant by resorting the provision of Section 256 of Criminal Procedure Code.

4. In fact, the application at Exhibit 32 was not decided and appears that merely, because on that day complainant was absent, the Magistrate had dismissed the complaint. It reveals that the Criminal complaint was of the year 2018, in which evidence affidavit was also filed and within few months it was dismissed as stated above.

5. In the circumstance, matter is require to be decided on merit. Therefore, the appeal stands disposed of with certain directions :

- (i) Leave to appeal granted.
- (ii) Appeal is **Allowed**.
- (iii) The impugned order dated 26.09.2018 stand set aside. The Criminal Complaint bearing No. 74 of 2018 is restored on the file of learned Magistrate.
- (iv) Complainant is directed to appear before the learned Magistrate on 01/02/2020 to face cross-examination. The complainant shall not seek any adjournment thereafter.

**JUDGE**

*Trupti*