

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**942 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.93 OF
2019**

**ARUN S/O. SAMHAJI MANE
VERSUS
DAGDU S/O. MALHARI JOGDANDE AND ANR**

Mr. Dilip B. Rode, Advocate for the appellant
Mr.S.P. Sonpawale, Advocate for the respondent/State
Mr. N. S. Ingale, Advocate for the respondent No.1

CORAM : N. R. BORKAR, J.

DATE : 21-10-2021

P. C.

. Leave to file appeal is granted.

2 Heard the appeal finally with the consent of the learned counsel for the parties. The appellant herein had filed the complaint case against the respondent No.1 for the offence punishable under Section 138 of the N. I. Act. The learned Magistrate by the order impugned dismissed the said complaint case for want of prosecution and acquitted the accused.

3. I have heard leaned counsel for the appellant and learned counsel for the respondent No.1.

4. The learned counsel for the appellant has tendered the roznama of the trial court and the same is taken on record and marked as 'X' for identification.

5. It appears that the respondent No.1 was absent on few dates and thus matter was adjourned and on few dates the Presiding Officer was on leave.

6. It appears that on the day the matter was dismissed for want of prosecution the appellant /complainant did appear before the court, however, the matter was already dismissed by the time. Considering these facts and circumstances the order impugned needs to be set aside. In the result, following order is passed:

ORDER

- i. The appeal is allowed.
- ii. The order impugned dated 26-03-2019 passed by the learned Magistrate in SCC No. 665 of 2015 dismissing the complaint case filed by the appellant for want of prosecution is set aside.
- iii. SCC No. 665 of 2016 is restored to the file of the learned Magistrate subject to payment of cost of Rs. 5,000/- to Bar Library, High Court Bench at

(3)

aplIn93.19

Aurangabad within two weeks from today.

iv. R & P be sent back to the trial court.

[N. R. BORKAR, J.]

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