

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

925 CRIMINAL APPEAL NO.525 OF 2019

SUDHIR KESHAVRAO PATIL  
VERSUS  
DNYANESHWAR NAGNATH KOLI

Mr.A.S. More, Advocate for the appellant.  
Mr.B.R. Sabale, Advocate for the respondent.

CORAM : N.R.BORKAR, J.  
DATED : 08.12.2021

PC :-

01. This appeal challenges order dated 10.11.2017 passed by the learned Magistrate in Summary Criminal Case No.538 of 2012.

02. The appellant herein had filed the complaint case against present respondent/accused for the offence punishable under section 138 of the Negotiable Instruments Act.

03. It appears that after issuance of process by the learned Magistrate, an application came to be filed by

the respondent/accused for discharge. The learned Magistrate rejected the said application by order dated 24.11.2015. The matter was then posted for explaining the particulars of the offence to the respondent/accused. It appears that as the appellant was not present on few days, the learned Magistrate by the order impugned, had dismissed the complaint case filed by the appellant for want of prosecution.

04. I have heard the learned Counsel for the appellant. It is submitted that, the matter was posted for explaining the particulars of the offence to the respondent/accused. It is submitted that in such circumstances, the trial Court ought not to have dismissed the complaint case for want of prosecution.

05. On the other hand, the learned Counsel for the respondent submits that he wants to go through the record and proceedings and therefore he be granted one week time.

06. After receipt of record and proceedings, this matter was listed at least on five occasions. The learned Counsel for the respondent was thus not justified in seeking adjournment on the ground that he wants to go through the record and proceedings, in absence of any explanation as to why it was not done earlier. Even otherwise, it appears that the Trial Court has dismissed the complaint when it was fixed for explaining the particulars of the offence to the respondent/accused.

07. Considering the facts and circumstances of the case, I am inclined to set aside the order impugned subject to payment of costs of Rs.10,000/-. In the result, the following order is passed :-

**O R D E R**

- i) The appeal is allowed.
- ii) The order impugned is set aside subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand).

(4)

crap525.19

iii) Summary Criminal Case No.538 of 2012 is restored on the file of learned Magistrate.

iv) The appellant shall pay the costs of Rs.10,000/- (Rupees Ten Thousand) to the District Legal Services Authority, Osmanabad within one month from today.

**[N.R.BORKAR,J. ]**