

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 18 OF 2020

Franki Gomes

..... Appellant

V e r s u s

Fayyaz Ahmed Sunkad

..... Respondent

Mr. Gaurang Panandiker, Advocate for the Appellant.

Coram :- NITIN W. SAMBRE, J.

Date : 17th March, 2021

ORAL ORDER

Heard.

2. None for the respondent though served. This Court has given sufficient opportunity to the respondent-accused to appear and assist the Court in the matter. However, it appears that the respondent has chosen not to appear in this Court.

3. This appeal is taken out by the appellant under Section 378 of the Code of Criminal Procedure, questioning the order dated 11.12.2018 passed by the learned Judicial Magistrate First Class, whereby the prosecution initiated against the respondent for an offence punishable under Section

138 of the Negotiable Instrument Act, came to be dismissed for want of presence of the applicant-complainant. It is informed that, in response to the Court's query, the learned Counsel for the appellant-complainant informs that all the earlier absence of the complainant were exempted subject to certain conditions. According to him, the day on which the complaint was dismissed, there was little confusion as to the time at which the proceedings had to be taken up for recording of the evidence. According to him, no further adjournment on whatsoever count will be sought before the Court below in case, if an opportunity to proceed with the complaint proceedings, is offered by this Court.

3. I have examined the aforesaid submissions in the light of the roznama produced on record.

4. But, for the absence of the applicant on 11.12.2018, the appellant-complainant remained present as and when possible and otherwise was exempted upon a request made.

5. The statement made by the learned Counsel for the appellant that he shall not be seeking any adjournment on unnecessary grounds and shall co-operate with the learned Court below in the matter of recording of evidence

and disposal of the complainant, is accepted as an assurance.

6. The aforesaid contentions are not controverted by the respondent as he has chosen not to appear.

7. In that view of the matter, the order impugned dated 11.12.2018 thereby dismissing the complaint, is hereby set aside. The complaint stood restored to the file of the learned Magistrate.

8. The appeal stands allowed in the above terms.

NITIN W. SAMBRE, J.

ANDREZA
PEREIRA

 Digitally signed by ANDREZA PEREIRA
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