

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

33 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.11 OF 2022

HARICHANDRA UMAJI GABHUD
VERSUS
PRASHANT VINAYAKRAO BHARAT

...
Advocate for Appellants : Mr. Ram B. Deshpande.
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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 29th August, 2022.

PER COURT:

. Heard Mr. Ram Deshpande, learned counsel for applicant/
original complainant. Respondent/original accused though duly served
with notice, remained absent when the matter is called out.

2 Mr. Ram Deshpande, learned counsel for applicant invited
my attention to the impugned order passed below Exhibit-1 in SCC
No.708 of 2018 dated 9th December, 2021. He pointed out that the
complaint came to be dismissed in a special drive conducted by the
learned Judicial Magistrate First Class, Georai, Court No.3. In fact, no
steps were required to be taken on behalf of the complainant when the
case was fixed for recording plea of accused. It was improper on the
part of the learned Magistrate to dismiss the complaint for want of
prosecution. He, therefore, urged to grant leave.

3 Having regard to the submissions of the learned counsel for the applicant, I have gone through the impugned order passed below Exhibit-1 in SCC No.708 of 2018 dated 9th December, 2021. It seems that the learned Magistrate has conducted special drive in respect of cases, which are pending for steps and by way of special drive, the private complaint filed by this applicant for dishonour of cheque, came to be dismissed for want of prosecution. It is revealed that the case was pending for recording the plea of the accused / respondent. As such, there was no need for the complainant to take steps in this regard. It was for the Magistrate to record the plea of the accused by securing presence of the respondent/original accused. On 9th December, 2021, the respondent/accused was not present and he had moved an application for exemption. In this background, it was improper on the part of the learned Judicial Magistrate First Class to dismiss the complaint for want of steps.

4 Certainly, case is made out to grant leave. Hence, the following order is passed:

ORDER

- I. The application for leave to file appeal under Section 378(4) of the Code of Criminal Procedure moved by the applicant, is hereby allowed in terms of prayer clause (A).

- II. The Registry is directed to make scrutiny of the appeal and it be registered and thereafter, it be placed before this Court for admission.
- III. The application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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