

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

CRIMINAL APPEAL NO. 572 OF 2022

**DEVIDAS PIRAJI CHALAK
VERSUS
MANSUBRAO RAMRAO JADHAV AND ANOTHER**

...

Advocate for Appellant : Mr. Shermale K. N.
APP for Respondent No.2/State : Mr. S. W. Mundhe

...

**CORAM : KISHORE C. SANT, J.
DATE : 20th OCTOBER 2022.**

Per Court :

Heard.

1. Though the Respondent No.1 is served, none appears for him.
2. Looking to the nature of the appeal that it is arising out of proceedings under Section 138 of the Negotiable Instruments Act, it is taken up for hearing at this stage. The Appellant had challenged the order passed by the learned Judicial Magistrate First Class, Vaijapur Dist. Aurangabad, dated 28.08.2018 in S.C.C. No. 1016/2014. By way of this order, the complaint is dismissed for want of Prosecution.

Learned Advocate submits that initially complaint was filed in the Court of Judicial Magistrate First Class, Georai. However, subsequently it came to be transferred to the Court of learned Judicial Magistrate First Class, Vaijapur, Dist. Aurangabad in view of change in legal position. Thereafter, it was difficult for the Appellant to pursue the matter on everyday by attending the Court personally. He was relying upon his Advocate, who was engaged at that time. Unfortunately, his Advocate for some reason, could not take steps to prosecute the complaint and it is for this reason, the complaint is dismissed. He submits that he needs proper opportunity to prosecute his complaint, since the complaint is under Section 138 of the Negotiable Instruments Act. He submits that the Appellant should not suffer for the fault of his Advocate.

3. Considering that the Appellant needs an opportunity to prosecute the complaint and also considering that in spite of service of Respondent No.1, he has not appeared before this Court, it can safely be inferred that he has no objection if the appeal is allowed. Hence the following order.

ORDER

- (i) The impugned order dated 28.08.2018 passed by the learned 3rd

Judicial Magistrate First Class, Vaijapur, Dist. Aurangabad in S.C.C. No.1016/2014 is hereby quashed and set aside.

- (ii) The complaint bearing S.C.C. No. 1016/2014 is restored to its file.
- (iii) The learned Judicial Magistrate First Class, Vaijapur, Dist. Aurangabad to make an endeavor to decide the complaint as early as possible preferably within six months from the receipt of this order.
- (iv) With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

Najeeb.