

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

969 CRIMINAL APPEAL NO.643 OF 2022

**HARICHANDRA UMAJI GABHUD
VERSUS
PRASHANT VINAYAKRAO BHARAT**

Mr. Ram B. Deshpande, Advocate for the appellant

CORAM : KISHORE C. SANT, J.

DATE : 02nd DECEMBER, 2022

P. C.

1. Heard the learned advocate for the appellant.

2. None appears for the respondent in spite of service.

It is submitted that even on earlier occasion when this court passed an order on leave to file an appeal against acquittal respondent was not present in spite of service.

3. The present appeal is filed challenging the order dated 09-12-2021 passed by the learned JMFC, Georai dismissing the complaint under Section 138 of the N. I. Act in default. From the orders, it appears that the matter was taken

up in special drive. From the roznama it appears that the matter was adjourned for various reasons. On 09-12-2021 accused had an application seeking exemption, same was allowed. However, on the very same day, the court also passed an order for dismissal of the complaint in default only observing that the matter is pending for taking steps on behalf of the complainant and in spite of repeated calling the advocate was absent.

4. Looking to the nature of the complaint, it would be proper to restore the complaint to its file by quashing and setting aside the impugned order dated 09-12-2021. At the same time, it is necessary to impose some condition. It appears that even the complainant has not shown diligence as plea was not recorded for three years. The complaint is filed on 24-10-2018. It is submitted that due to covid lockdown period he could not attend the court for recording the plea.

5. Considering the above, it would be proper to impose some costs on the complainant present/appellant. The appeal is

(3)

criapl643.22

thus, allowed in terms of prayer clause (C) subject to condition of cost depositing Rs.2,500/- in the trial court within a period of six weeks from today.

[KISHORE C. SANT, J.]

VishalK/criapl643.22