

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

904 CRIMINAL APPEAL NO.732 OF 2022

**BHAUSAHEB SAMBHAJI MORE
VERSUS
BHAUSAHEB ASARAM DAHATONDE AND OTHERS**

Mr. Ram B. Deshpande, Advocate for the appellant
Mr. S. E. Shekade, Advocate for the respondent Nos. 1 to 4

CORAM : KISHORE C. SANT, J.

DATE : 18th October, 2022

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1. Heard learned advocates for the parties.
2. Looking to the nature of the appeal that it is filed against the order dismissing the complaint for want of prosecution and evidence it is taken up for final disposal.
3. Learned advocate for the appellant- original complainant submits that complaint was filed on 11-04-2014. His deposition was recorded on 11-05-2015. Further, he led his evidence in spite of his evidence, there was no cross-

examination taken by the accused. On that count it was adjourned on so many times. Ultimately the court passed an order of no-cross. The application was filed to set aside the no-cross order that came to be allowed. But, even after that there was no progress in the matter. He submits that it is true that on the some occasion the complainant was not present for the reasons that there was no progress. Ultimately, he submits that the court below passed an order dated 16-11-2019 dismissing the complaint. Even on that accused person had filed an application for exemption which shows that it is not only the complainant who is to be blamed for delay

3. As against that the learned advocate for the respondent/accused submits that it was duty of the complainant to prosecute the proceeding diligently. His absence on various dates shows that he has filed complaint only to harass the accused persons. He further submitted that it was in fact a civil dispute which is tried to be converted into a criminal case. There was hand loan transaction between the parties and it is because

of that the complaint is now filed.

4. Considered the submissions. It is true that there are lapses on the part of the complainant. It is also the fact that for four years he was not cross-examined by the accused.

5. Considering that the complainant should get the chance to prove his case before the court, this court is inclined to allow the appeal by setting aside the order dated 16-11-2019 passed by the learned JMFC (Court-2), Ashti, Dist. Beed in RCC No.188 of 2014. At the same time it is necessary to balance the equity since the accused is put some inconvenience because of absence of complainant, this court deems fit to direct the appellant to deposit Rs.10,000/- in the trial court. The accused will be entitled to receive Rs.2,500/- each. Hence, the following order:-

ORDER

a] The impugned order dated 16-11-2019, passed by the learned trial JMFC (Court-2), Ashti, Dist. Beed in RCC No. 188 of 2014 is quashed and set aside.

b] The complaint RCC No. 188of 2014 is restored to its file.

c] Parties are directed not to seek unnecessary adjournments before the trial court and shall co-operate in the trial.

d] Trial court is directed to decide the complaint as early as possible preferably within a period of six months.

e] Appellant/complainant to deposit Rs.10,000/- in the trial court within a period of four weeks from today.

f] Each of the accused is at liberty to withdraw Rs.2500/- out of the amount deposited by the complainant.

g] Appeal stands disposed off.

[KISHORE C. SANT, J.]