

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

928 CRIMINAL APPEAL NO.777 OF 2022

**VISHNUKUMAR BANSILAL KALANTRI
VERSUS
RADHESHYAM GANESHLAL DHOOT**

Mr. Ameya N. Sabnis, Advocate for the appellant
Mr. E. G. Irale for the respondent (appointed)

CORAM : KISHORE C. SANT, J.

DATE : 18th October, 2022

P. C.

1. Heard both the learned advocates for the parties.
2. This is a case arising out of the order dated 17-08-2021, passed in SCC (STCC) No.884/2013, by the learned 5th JMFC, Latur dismissing the complaint for want of prosecution and absence of complainant.
3. Learned advocate for the appellant submits that in fact, the matter was pending before the 3rd JMFC, Latur. By an order dated 27-10-2020, the learned Sessions Judge, had passed

an order transferring the proceeding to the Court of 5th JMFC. From the roznama it is seen that suddenly that was placed before 6th JMFC on 21-01-2021 and same was adjourned to 26-03-2021. On that day also it was before the 6th JMFC till 11-05-2021. Thereafter, again it was transferred to 5th JMFC till 09-07-2021. It was being placed before 6th JMFC and suddenly on 17-08-2021 it was placed before the 5th JMFC, Latur on which date the order came to be passed. He submits that the said was the period when covid protoco was in force and therefore complainant and his advocate were not attending the court on every date. It is for this reason they did not notice on 17-08-2021 that their matter was placed before the court. Therefore, he prays that the impugned order needs to be set aside and SCC (STCC) No. 884/2013 needs to be restored to its original status.

4. Learned advocate for the respondent vehemently opposed the appeal. He states that the complaint is lodged in the year 2013. Till date there are no effective steps taken in the matter. The complainant is deliberately not participating in the

proceeding which causes harass the respondent. He prays for dismissal of the appeal.

5. Considering the submissions and the documents, it clearly appears that twice there was a change in the court and the proceeding was transferred. On 17-08-2021, the matter was before 5th Chief Judicial Magistrate, till date the matter was before learned 6th JMFC. Case is lodged for the offence punishable under Section 138. Considering the nature of the complaint, it is necessary to give opportunity to the complainant to prosecute his case, it would be appropriate to put the complainant to some conditions and to compensate the respondent/accused. Hence, the following order:

ORDER

a] Impugned order dated 17-08-2021 passed in SCC (STCC) No. 884/2013 by the learned 5th JMFC, Latur is quashed and set aside.

b] Proceeding of SCC (STCC) No. 884/2013 is restored to its position subject to cost of Rs.5000/- in the office of the Legal Aid Committee in this Court.

c] The trial court to make endeavour to decide and disposed off the complaint within a period of 6 months.

d] Both the parties shall co-operate and shall not seek unnecessary adjournments.

e] Learned advocate for the respondent is appointed and he is entitled to receive his fees from Legal Aid.

[KISHORE C. SANT, J.]