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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 914 OF 2021**

Ankit Kumar Rawal ... Petitioner
V/s.
M/s Mount Mary Builders And Others. ... Respondent

Mr. Kishor Patil, Advocate for the Petitioner.
Mr. A.R. Patil, APP for State.

CORAM : AMIT BORKAR, J.

DATED : 6TH OCTOBER, 2022.

P.C:-

1. The petitioner by this writ petition is challenging the order dated 7th February, 2020 dismissing complaint of the petitioner under section 203 of Code of Criminal Procedure mainly on the ground that the petitioner was absent when the matter was called upon.

2. The facts and issue involved for adjudication are as under :

The petitioner/original complainant who had filed a complaint under section 138 of Negotiable Instruments Act, 1881 on 28th August, 2018. According to the averments made on page 9-A of the petition, the petitioner was present in the Court on eight occasions out of ten. The said averment is not disputed by the respondent as the respondent has failed to remain present in spite of service of court notice. In absence of the dispute in

relation to the facts stated in paragraph 9-A of the petition, in my opinion, learned Magistrate was not justified in dismissing the complaint under section 203 of Code of Criminal Procedure. The learned Magistrate ought to have considered the object of statute and the nature of offence alleged by the complainant before passing order under section 203 of Code of Criminal Procedure. Since the complaint under section 138 of Negotiable Instrument Act, 1881 is dismissed under section 203 of Code of Criminal Procedure and having considered the fact that on eight occasions out of ten the petitioner was present, in my opinion, the learned Magistrate was not justified in dismissing the complaint. Hence, following order :

- (a) The impugned order dated 7th February, 2020 passed by the learned Magistrate 28th Court, Esplanade Mumbai below Exhibit-1 in CC 2213/SS/2018 is quashed and set aside.
- (b) Complaint No. CC/2213/55/2018 is restored to the file before the learned Magistrate 28th Court, Esplanade Mumbai who shall decide the complaint in accordance with law.
- (c) Rule is made absolute in above terms. No costs.

(AMIT BORKAR, J.)