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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.527 OF 2019

Shanaishwar Nagari Sahakari
Patsanstha Maryadit, Sangli
Through Authorised person
Shri Sharad Balasaheb Patil
R/o Ori Bunglow, Moti Chowk,
Sangli, Taluka Miraj,
District Sangli

... Applicant/Appellant

Vs.

1. Shamji Morarji Gala
R/o 1707, Ganesh Nagar
5th Line,
Sangli, Taluka Miraj,
District Sangli

... Respondents

Mr. Nagesh Y. Chavan for the Applicant in both Applications.
Mr. Hemal for Respondent No.1.
Mr. H. J. Dedhia APP for Respondent No.3-State.

CORAM : S. M. MODAK, J.

DATED : 9TH FEBRUARY 2023

JUGMENT :

1. Heard learned Advocate for the Applicant-complainant, learned Advocate for Respondent No.1-accused and learned APP for Respondent No.2-State.

2. The complaint was dismissed by the order dated 19th October 2019, for not taking steps by the Applicant. The said order was passed not only prior to recording of evidence but even at an early stage. Even the Court has not issued process and the case was fixed for recording of verification of the complainant. Due to absence of the complainant, the complaint was dismissed.

3. The case is made out and hence, Application for leave to prefer an Appeal is allowed. Considering the short controversy, by consent the matter is taken up for final hearing.

4. Perused the impugned order and roznama annexed thereto. The complaint was filed in the year 2017. It was dismissed on 19th October 2019. The matter was fixed for hearing on several dates. For some reason or other verification of the complainant could not be recorded. Sometimes it was due to absence of the complainant and on some occasions due to paucity of time of the Court.

5. After perusal of the roznama, I do not find that learned Magistrate was justified in dismissing the complaint. Learned Magistrate could have directed the complainant that the case is fixed for verification and if it is not recorded then the complaint will be dismissed.

6. It is pointed out that there is one more Summary Criminal Case No.2697 of 2017 pending between same parties before the same Court and in fact that was also fixed on 19th October 2019. It is also

submitted that the parties were present in that case on 19th October 2019. So it is really surprising, if the complainant can attend in another case why the verification is not recorded in present case. The Applicant contend that both cases were pending before different Judicial Officers but in same Court premises. The explanation is offered by the complainant that the matter was referred to Lok Adalat and roznama does not mention about referral of the matter to Lok Adalat. Now the question is whether the complainant needs to be given an opportunity to record his verification or not.

7. Learned Advocate for Respondent No.1-accused submitted that his client is 77 years old and in fact the cheque was issued as the Managing Committee member of the complainant-Patpedi has obtained loan from Patpedi and he has absconded. At this stage it can only be said that learned Magistrate can consider this grievance at appropriate stage. The impugned order deserves to be set aside. One more opportunity need to be given to the complainant. At the same time certain directions are required be given to the complainant. Hence the following order is passed :

ORDER

- (a) The order dated 19th October 2019, passed by learned Judicial Magistrate, First Class, Court No.1, Sangli, below Exhibit-1 in Summary Criminal Case No.2697 of 2017 is set aside.
- (b) The complainant is directed to appear before the concerned Court on 27th February 2023, to give verification and learned

Magistrate to record verification on the same date without adjournment.

- (c) If the verification is not recorded from the complainant's side, learned Magistrate is at liberty to pass appropriate order.
 - (d) The contentions of both parties are kept open.
- 8. Appeal is disposed of in the aforesaid terms.
 - 9. Parties to act on an authenticated copy of this order.

(S. M. MODAK, J.)