

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.22 OF 2022
IN
CRIMINAL APPEAL NO.262 OF 2023**

Shree Tamjai Trading Co.

Through its Proprietor

... Applicant

Vs.

Mantesh Mahadev Vibhute & Anr.

... Respondents

Mr. Anand S. Patil for the Applicant.

Mr. Y. Y. Dabke APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 23RD FEBRUARY 2023

PC:-

1. Heard learned Advocate for the Applicant-complainant and learned APP for the Respondent-State.

2. Court notice report is awaited but private notice is served. There is affidavit of service to that effect accompanied by necessary document. The same is taken on record and marked as Annexure "X". There is appearance on behalf of Respondent No.1. Today no one is present.

3. Perused the order dated 12/11/2021 passed by the learned Magistrate, Kolhapur. The case was dismissed for not taking steps by the complainant. In fact, the record shows that there is order for issuance of bailable warrant and even non bailable warrant. The order is exfacie illegal. Special leave is granted.

4. Admit.

CRIMINAL APPEAL NO.262 OF 2023

5. Considering limited controversy, the Appeal is taken up for final hearing.

6. There is roznama filed on record. There are applications made for issuance ofailable and nonailable warrants. They were also issued. This was prior to corona virus, nothing happened during corona due to national lockdown. After restart, the stage is return ofailable and nonailable warrant. So it is not that the complainant has not taken steps. The learned Magistrate hurriedly dismissed the complaint and in fact learned Magistrate ought to have granted sometime to the complainant. The order is illegal and needs to be set aside. An opportunity needs to be given to the complainant. Hence the following order is passed :

ORDER

- (a) The Appeal is allowed.
- (b) The judgment and order dated 12/11/2021 passed by learned 7th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Kolhapur is Criminal Case No.3082/2019 is quashed and set aside and the matter is remanded back for fresh consideration.
- (c) The Appellant to appear before the learned Magistrate on **20th March 2023**.
- (d) The learned Magistrate to decide the matter as per law.
- (e) The Appellant to take steps for securing presence of the Respondent-accused.

(S. M. MODAK, J.)