

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

CRIMINAL APPEAL NO. 243 OF 2023

Dinesh Maganlal Jadhav

...Appellant

vs.

Dhiraj Jawanmal Rawal and Ors.

...Respondents

Mr. Dharmendra D. Jadhav - Advocate for the Appellant

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 12th JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Appellant/Complainant.
2. The complaint filed for the offence punishable under Section 138 of the Negotiable Instruments Act was dismissed for want of verification. The complaint is filed on 19/01/2020. Its copy is there on page no. 21. It was dismissed on 10/12/2021.
3. The Respondent Nos. 1 and 2 are the original accused persons. It is claimed that Appellant does not want to prosecute against the Respondent No. 2. He was joined because promissory note was given by both the Respondents. It is on page no. 29.

Whereas cheque is issued by the Respondent No. 1 only. Oral leave to amend by deleting the name of the Respondent No. 2 is allowed.
Amendment to be carried out forthwith.

4. When notice was issued, the Farad-sheet mentioned that notice is served on Respondent No. 1 through cousin brother. Whereas, it could not be served on the Respondent No. 2 as per Police record. Whereas, today an affidavit of the private service is filed alongwith returned envelopes.

5. Leave to prefer an appeal is already granted on 15/02/2023.

6. The copy of orders sheets are annexed on page no. 50 to page no. 54. If they are read, it cannot be said that the Complainant has unnecessarily delayed the recording of his verification. The Complainant was not present on 12/02/2021 and on 10/12/2021. Whereas on other dates i.e. on 13/05/2021 and 17/09/2021, either learned Judge was on leave or Covid restrictions were there. From the above, it is clear that learned Metropolitan Magistrate has shown haste in dismissing the complaint. Order cannot be sustained. It needs to be set aside. Hence, the following order is passed:-

ORDER

- (i) Appeal is allowed.
- (ii) Order dated 10/12/2021 passed in Case No. SS/4401309/2020 is set aside.
- (iii) The Court of the Metropolitan Magistrate is directed to record the verification of the Appellant and to pass an appropriate order.

7. Appellant is directed to attend the Trial Court on 26/06/2023.

8. Appeal is accordingly disposed of.

[S. M. MODAK, J.]