

Shailaja

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

CRIMINAL APPEAL NO.543 OF 2013

M/s. Dwarakadhish Petroleum Surur	]	Appellant
Vs.		
Arvind Tanaji Patil and another	]	Respondents

.....
Mr. V.S. Talkute, for Appellant.

None for Respondent No.1.

Ms. G.P. Mulekar, A.P.P, for Respondent No.2-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 10th November, 2023.

JUDGMENT:

1. Heard learned Counsel for the appellant.

2. The complaint under section 138 of the Negotiable Instruments Act, 1881 was filed by respondent No.1 bearing No.238 of 2005 in the Court of Judicial Magistrate First-class, Wai.

3. On 6th August, 2005, learned J.M.F.C after examination of the complaint under section 200 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”) and after going through the documents on record and having heard learned Counsel who

appeared for the complainant found that there was sufficient material against respondent No.1-accused and therefore, issued process under section 204 of the Cr. P.C. Thereafter, the matter proceeded further as usual, sometimes, for want of presence of complainant and sometimes for want of presence of the accused.

4. Copy of *Roznama* reveals that on 21st July, 2007, Non Bailable Warrant was issued against respondent No.1-accused. On 18th August, 2007, the complainant along with Advocate was present. However, the accused was absent. Similar was the position on 28th September, 2007.

5. Subsequently, the learned Magistrate again issued Non Bailable Warrant against accused and notice to the surety on 4th October, 2007.

6. Again, on 3rd November, 2007, complainant's Advocate moved an application for issuing Non Bailable Warrant against the accused along with a process to be served through R.P.A.D. A bare look at the *Roznama* reveals that accused was persistently absent despite issuance of Non Bailable Warrant by the Magistrate Court.

7. On 5th July, 2008, the Police Inspector, Miraj Rural Police Station was directed to execute Nonailable Warrant as per “**Exhibit 26**”. It also transpires that the matter was placed before *Lok Adalat* on 10th September, 2008. It, therefore, cannot be said that the complainant was persistently absent to prosecute his complaint. Since the accused was persistently absent almost on all dates, suddenly, the learned Magistrate, unmindful of this fact dismissed the complaint for want of prosecution by the impugned order without stating anything about absence of the accused-respondent No.1. Surprisingly, the Magistrate observed that sufficient time was given to the complainant to secure the presence of the accused who remained absent. This observation itself is not in consonance with the provisions of law. The record reveals that the complainant made all efforts to secure the presence of the accused.

8. The impugned order, therefore, is patently illegal and, therefore, needs to be quashed and set aside, accordingly, it is quashed and set aside.

9. The complaint is restored to the file. The complainant shall appear before the learned Magistrate, Wai on 1st December, 2023. The learned Magistrate shall thereafter proceed further in accordance with law and decide the complaint on merits by giving due opportunity to respondent No.1-accused of being heard. Respondent No.1-accused shall also appear before the learned Magistrate on 1st December, 2023. The Magistrate shall thereafter proceed to hear the complaint on day-today basis and shall make an endeavour to dispose of the same by 22nd December, 2023.
10. The appeal stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]