

Nikita

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

CRIMINAL APPLICATION NO.1420 OF 2022

Sadanand Bhikaji Ghate ... Applicant
V/s.
Santosh Shankar Mahapadi & Anr. ... Respondents

Mr. Mohammad M. Abadi for Applicant.

Mr. A.R. Patil, APP for the State/Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 25, 2023

P.C.:

1. The application is directed against order dated 10th November 2022, passed by Metropolitan Magistrate 30th Court, Kurla, Mumbai, dismissing complaint of applicant under Section 256 of the Code of Criminal Procedure, 1973.

2. The applicant is original complainant who lodged proceedings under Section 138 of Negotiable Instruments Act, 1881 against the accused. On 18th March 2017, the Magistrate issued process against the accused. On 21st August 2019, the accused completed cross-examination of the complainant however, on 10th November 2022, the Magistrate dismissed the complaint due to absence of the complainant.

3. This Court on 25th January 2023 issued notice to respondent No.1. Office remark dated 24th March 2023, shows that notice of petition has been duly served on respondent No.2. Despite notice,

the respondent No.1 has failed to appear either in person or through learned advocate. Having considered nature of proceedings that is under Section 138 of Negotiable Instruments Act, 1881 and the fact that complainant participated in the hearing by examining himself and accused conducted cross-examination of the complainant. In my opinion, the Magistrate was not justified in dismissing the complainant under Section 256 of the Code of Criminal Procedure, 1973 without giving opportunity of leading evidence to the complainant to prove his case.

4. Considering the object and purpose of Negotiable Instruments Act, 1881 the learned Magistrate in the fact of the case could not have dismissed the complaint. Hence the petitioner has made out the case for restoration of the complaint. Hence following order:

5. Impugned order dated 10th November 2022, passed by Metropolitan Magistrate 30th Court, Kurla, Mumbai in C.C. No.989/SS/2016 is quashed and set aside. Complaint in C.C. No.989/SS/2016 is restored to file.

6. The learned Magistrate shall decide the complaint in accordance with law.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)