



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 245 OF 2024

Sadanand Narayan Nihave
Age; 46 years, Occ; Business,
R/o; Labour Colony,
Tq. and Dist. Aurangabad.

...Appellant
(Original Complainant)

VERSUS

Anil Ramchandra Walvekar,
Age; 49 years, Occ; Business,
R/o; Building No. 32, Room No. 284,
Eknath Nagar Road,
Near Ganpati Temple, Aurangabad.

...Respondent
(Original Accused)

...
Advocate for the appellant : Mr. Gautam J. Pahilwan
Advocate for Respondent : Mr. Chaitanya C. Deshpande h/f
Mr. Govind M. Sharma
...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 03.04.2024.

ORDER :

1. This appeal arises out of the judgment and order of acquittal passed by the learned 10th Additional Chief Judicial Magistrate, Aurangabad in SCC No. 1392 of 2019.

2. Learned Counsel for the appellant pointed out that SCC No. 1392 of 2019 was filed for commission of the offence punishable under Section 138 of the Negotiable Instruments Act (for short “N.I. Act”) against the respondent. The complaint was dismissed for want of prosecution and therefore, ALP was preferred and the same has been allowed by this Court by order dated 01.03.2024. Further according to him, now the directions are required to be issued to the learned trial Court to decide SCC No. 1392 of 2019 on merits by hearing both the sides.

3. Learned Counsel for the respondent strongly opposed the appeal submitting that the complaint was instituted in 2019, repeatedly complainant failed to appear to prosecute the complaint. Accused had attended the dates and was ready to face the trial, however, inspite of giving opportunity, the complainant failed to conduct the proceeding. Therefore, learned trial Court has rightly dismissed the complaint and acquitted the accused.

4. After considering the submissions of both the

sides, it seems that SCC No. 1392 of 2019 was filed in the trial Court on 19.01.2019 alleging the commission of offence punishable under Section 138 of N.I. Act.

5. After issueance of process accused appeared and pleaded not guilty and claimed to be tried. The record shows that the complainant has also adduced evidence on affidavit Exh. 5 and tendered documentary evidence, like Cheque in question, bank memo, a copy of legal notice and postal acknowledgment etc. The record further shows that on 13.09.2022, on the application of the present complainant, the learned trial Court has also directed the payment of interim compensation as per Section 143A of the N.I. Act, by order dated 13.09.2022, however, the complaint has been finally dismissed on 20.07.2023, on the ground that for continue six dates the complainant failed to appear in the Court and finally Court passed the order of acquittal.

6. Admittedly, this Court had allowed the application for leave to file appeal. Therefore, in the interest of justice, for a fair opportunity, the matter is required to be remanded to

the trial Court for trial and to allow both the parties to contest the proceedings on merit. Hence the following order :

ORDER

- a) Appeal is allowed.
- b) Matter is remanded back to the trial Court.
- c) The learned 10th Additional Chief Judicial Magistrate, Aurangabad, is directed to conduct the trial of SCC No. 1392 of 2019, by affording an opportunity to both the sides to adduce the evidence, if any and to take the proceeding to a logical end.
- d) Parties to appear before the learned 10th Additional Chief Judicial Magistrate, Aurangabad, in first week of May, 2024 as per the convenience of the trial Court.

**[ABHAY S. WAGHWASE]
JUDGE**