



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 632 OF 2024

Sanjay Kisan Ghote

VERSUS

Vijay Digambar Kolge

.....

Mr. Shadab Shaikh, Advocate h/f Mr. Amol A. Kokad, Advocate
for Appellants

Mr. Vishnu Khanke, Advocate for Respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th SEPTEMBER, 2024

ORDER :

1. This appeal filed under Section 378(4) of Cr.P.C. challenges the impugned judgment and order dated 05.02.2024 passed by learned Additional Chief Judicial Magistrate, Court No.10, Aurangabad in S.C.C. No.9550/2018, thereby dismissing the complaint filed by the appellant under section 138 of Negotiable Instruments Act for absence of complainant and acquitting the accused under section 256 of the Code of Criminal Procedure.

2. Heard learned advocate for appellant and learned advocate for respondent. Perused the appeal memo, documents placed on record and the impugned judgment and order.

3. Learned advocate for respondent vehemently opposed the appeal stating that appellant/complainant has failed to lead evidence for five years, and therefore, the trial Court is justified in dismissing the complaint for absence of appellant/complainant and acquitting the accused.

4. Taking into consideration the fact that, appellant/complainant was prosecuting the complaint from the year 2018, a fair opportunity needs to be given to him to prove his case on merit. Hence, the following order:

ORDER

- (i) Impugned judgment and order dated 05.02.2024 passed by learned Additional Chief Judicial Magistrate, Court No.10, Aurangabad in S.C.C. No.9550/2018, is hereby quashed and set aside on condition that appellant/complainant shall pay costs of Rs.10,000/- to the respondent in the trial Court.
- (ii) S.C.C. No.9550/2018 is restored to its original position.
- (iii) Both the parties shall appear before the trial Court on 07.10.2024. Formal notice of appearance is dispensed with.
- (iv) Trial is expedited.
- (v) Appeal is disposed of.

**[NITIN B. SURYAWANSHI]
JUDGE**