



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 736 OF 2023

Dilip Abasaheb Thorat

....Appellant

VERSUS

Santosh Eknath Phopse

.....Respondent

.....
Mr. Ajinkya Kale h/f. Mr. Rajesh Mewara, Advocate for appellant

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st JULY, 2024

ORDER :

1. By this appeal, appellant challenges order dated 04.05.2022 passed by learned Judicial Magistrate First Class, Shrirampur, Dist. Ahmednagar in S.C.C. No. 1005 of 2018, thereby dismissing said case filed by appellant under section 138 of Negotiable Instruments Act in default for want of prosecution and acquitting respondent/accused.

2. Heard learned advocate for appellant. Though served, none appears for respondent. Perused the appeal memo and impugned order.

3. Leave to file appeal is already granted to the appellant vide order dated 04.08.2023.

Bhagyawant Punde

4. According to appellant, he appeared on the date on which the matter was dismissed in default. Impugned order shows that appellant was absent on three dates i.e. 18.09.2019, 09.02.2021 and 24.11.2021. According to the appellant, one of the date was during lock down and on the last date he appeared in the second session and filed application for issuance of warrant to the respondent. However, since order was already passed, Trial Court has not considered the said application. Appellant has filed case for dishonor of cheque of Rs. 1,15,900/- in the year 2018 and he needs to be given fair opportunity to lead evidence and prove his case on merits. In the result, following order:

ORDER

- I) Criminal Appeal is allowed.
- II) Impugned order dated 04.05.2022, passed by Judicial Magistrate First Class, Shrirampur, Dist. Ahmednagar, below Exhibit-1 in S.C.C. No. 1005/2018 is quashed and set aside.
- III) S.C.C. No. 1005/2018 is restored to its original stage to the file of learned Judicial Magistrate First Class, Shrirampur, Dist. Ahmednagar.

[NITIN B. SURYAWANSHI, J.]