



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 808 OF 2024

Dilip Prasadrao Chavan
VERSUS
Sanjay Parmeshwar Somewad

.....
Mr. Vaibhav N. Shinde, Advocate for Appellant
Mr. R.B. Narwade, Advocate for Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th SEPTEMBER, 2024

ORDER :

1. By this appeal filed under Section 378(4) of Cr.P.C., appellant/complainant challenges the impugned judgment and order dated 09.02.2023 passed by learned Judicial Magistrate, First Class, Himayatnagar in Summary Criminal Case No.69 of 2021, thereby dismissing the complaint filed by the appellant under section 138 of Negotiable Instruments Act 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 strenuously opposed the appeal stating that on eighteen dates, the appellant was absent in the trial Court.

4. Perusal of *Rojanama* placed on record shows that on 12.11.2022, the matter was kept before the *Lok Adalat*, and thereafter, the matter was kept for recording evidence on 06.12.2023. Thereafter, since the appellant failed to remain present and lead evidence, trial Court has passed the impugned order.

5. Though there appear lapses on the part of appellant in prosecuting his complaint, considering the fact that appellant is prosecuting the complaint from the year 2021, a fair opportunity needs to be given to him to prove his case on merit. Hence, the following order:

ORDER

- (i) Impugned order dated 09.02.2023 passed by learned Judicial Magistrate, First Class, Himayatnagar in Summary Criminal Case No.69 of 2021, is hereby quashed and set aside on condition that appellant/complainant shall pay costs of Rs.5,000/- to the respondent in the trial Court.

- (ii) Summary Criminal Case No.69 of 2021 is restored to its original position.
- (iii) Both the parties shall appear before the trial Court on 10.10.2024 and co-operate in the expeditious disposal of the trial.
- (iv) Appeal is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE