



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.126 OF 2023

Rohini Vijay Panpatil,
Age : 38 years, Occu. : Household,
R/o. Plot No. 266, Bhaktinagar,
Pisadevi Road, Aurangabad.
Tq. & Dist. Aurangabad.

... Applicant
(Orig. Complainant)

Versus

Bhimrao Natha Gaikwad,
Age : 62 years, Occu. : Retired,
R/o. Room No.9, Yashodhara,
Chal No.14, Mahatma Phule Nagar-1,
Near Narayanguru High School,
P.I. Lokhande Road, Chembur,
Mumbai - 400 089.

... Respondent
(Orig. Accused)

...
Mr. Gajanan Gulabrao Gabhud, Advocate for Appellant.
Ms. Shaikh Afreen, Advocate for respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 22nd FEBRUARY, 2024

ORDER :

1. Vide instant application, original complainant is seeking leave to file appeal against order dated 07.09.2023 passed below Exh.1 by Additional Chief Judicial Magistrate, Court No.10, Aurangabad in S.C.C. No. 4854 of 2020.

2. Learned counsel for applicant submitted that, present applicant had instituted proceedings under section 138 of Negotiable Instruments Act, 1881, bearing S.C.C No.4854 of 2020,

alleging commission of offence by present respondent. He further pointed out that, learned trial Court by order dated 03.12.2020 on its due satisfaction and verification, issue process against the accused. However, by order dated 07.09.2023, complaint came to be dismissed for absence of complainant.

3. It is further pointed out that, merely on three dates complainant, who is a lady could not remain present, however, learned trial court has not give sufficient opportunity and on technical ground of absent directly acquitted the accused. That, the proceedings were not conducted and decided on merits, and hence the leave application.

4. Learned counsel for respondent opposed the application on the ground that, there is utter failure to prosecute the matter. That, complainant was consistently remaining absent and therefore, the learned trial court within its powers dismissed the complaint. Hence, she prays to refuse the leave.

5. Apparently, proceedings under section 138 of N.I. Act were instituted by present applicant, alleging dishonour of cheque. Record shows that, learned trial court has also verified complaint as well as complainant, and thereafter, has issued process by order

dated 03.12.2020. Complaint seems to be dismissed by order dated 07.09.2023 precisely for want of prosecution.

6. Considering the above and in view of a fair opportunity to contest the proceedings, leave deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.

(ABHAY S. WAGHWASE, J.)