



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1100 OF 2023

Shivaji s/o. Sambhaji Bodke,
Age : 48 years, Occu. : Agri.,
R/o. Borgaon, Tq. Degloor,
Dist. Nanded.

... Appellant.

Versus

Jivan s/o. Ramesh Khadse,
Age : 40 years, Occu. : Service,
R/o. Mominpura, Ward no. 16,
At Post Mahur, Tq. Mahur,
Dist. Nanded.

... Respondent.

...
Mr. Taher Ali Quadri, Advocate for Appellant.
Mr. P. G. Gunale, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20 FEBRUARY 2024

PRONOUNCED ON : 23 FEBRUARY 2024

JUDGMENT :

1. Order dated 06.04.2023 passed by learned Judicial Magistrate First Class, Degloor in SCC No. 752 of 2020 is hereby questioned by original complainant, praying to restore the matter for trial.

2. It is pointed out that, there was hand loan transaction between complainant and accused i.e. to the tune of Rs.1,85,000/-. As accused wanted to purchase house, considering the relations, the said amount was given and accused has assured to repay the

said amount. But only on consistent demand, he issued cheque, which too was dishonoured and proceedings under section 138 of NI Act were instituted.

3. It is further pointed out that, full-proof case was made out. Complainant lost his mother, and therefore, there was no prosecution. Learned trial Court dismissed the complaint only for want of prosecution. That, if case is not restored and accused is not tried, there would be injustice. Hence, he prays to allow the appeal by restoring the complaint back on the file of learned Judicial Magistrate First Class for trial.

4. Learned counsel for accused would submit that, complainant was not diligent in prosecuting his case. As he repeatedly remained absent, learned trial Judge has passed impugned order and according to him, there is no case for restoration.

5. After hearing both side and going through the record, it is emerging that, present appellant instituted proceedings under section 138 of N.I. Act bearing S.C.C. No. 752 of 2020. Papers show that, learned trial Judge issued process on 03.02.2021. Copy of roznama at Exh.-C shows that, on 16.12.2022 matter was on the board for plea of accused and thereafter matter was posted for

evidence On 13.02.2023, 27.03.2023, 03.4.2023 and finally by order dated 06.04.2023 impugned order has been passed, holding that, none present for complainant and that he is not interested in the proceedings and hence complaint is dismissed in default.

6. Considering the above, complaint is apparently dismissed only for want of prosecution. Learned counsel orally undertakes to be diligence henceforth and prosecute the matter in trial court regularly. Resultantly, appeal deserves to be allowed. Hence, I proceed to pass the following order :-

ORDER

- (i) The criminal appeal is allowed.
- (ii) The impugned order dated 06.04.2023, passed by learned Judicial Magistrate First Class, Degloor below Exh.1, is accordingly quashed and set aside .
- (iii) Case bearing S.C.C. No. 752 of 2020 is restored at its original stage to the file of learned Judicial Magistrate First Class, Degloor.
- (iv) Learned Judicial Magistrate First Class, Degloor seized of S.C.C. No.752 of 2020 is directed to expedite the trial of the said case and to make an endeavor to conclude the same within a period of six months from the date of receipt of the present order.

(ABHAY S. WAGHWASE, J.)