

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 395 OF 2014

Shrimati Aasha Madhukar Patil ... Applicant
V/s.
Anandrao Shripati Patil & Anr. ... Respondents

Ms Bhavika Shinde i/b. Mr. Umesh Mankapure for the Applicant.
Ms P. N. Dabhokar, APP for the Respondent State.

CORAM : M. M. SATHAYE, J.

DATED : 26 SEPTEMBER 2024

P.C.:

1. Heard learned Counsel for the Applicant/Original Complainant. None appears for the Respondent No. 1/Accused though duly served. Record indicates that notice for final disposal was given under order dated 2 July 2018 and thereafter the Respondent No. 1-Accused has been duly served.
2. This is an Application u/s. 378(4) of the Code of Criminal Procedure, 1973 ("the Cr.PC" for short) seeking leave to file Appeal against the impugned order dated 13 December 2013 passed by learned Judicial Magistrate First Class, Sangli in S.C.C. No. 748 of 2010, by which the complainant filed u/s 138 of the Negotiable Instruments Act, 1881 (for short "N.I. Act") was dismissed for default u/s. 256 of the Cr.PC.

3. Learned Counsel for the Applicant has taken me through the Rozanama of the case and submitted that the Applicant was diligently prosecuting the complaint and the matter had reached the stage of recording the statement of the accused u/s. 313 of the Cr.PC. Perusal of the Rozanama shows that both the Complainant and his Advocate were prosecuting the complaint and the matter is shown to have listed for hearing since March 2013 till August 2013. In between these dates, sometime when the Claimant was not present, the Advocate was shown to be present.

4. Learned Counsel for the Applicant further submits that the complaint was transferred to Lok Adalat for exploring possibility of resolution of dispute. However, after Lok Adalat, it was dismissed when it appeared for the first time in the regular course. She submits that in such a situation, opportunity should have been given instead of dismissing the complaint for default. A specific ground is taken in the Application to that effect.

5. Considering that the Respondent/Accused has chosen not to appear despite service, case of the Applicant is uncontroverted. Considering the earlier order dated 2 July 2018, passed by this court indicating that the matter should be finally heard instead of granting leave, in my view, arguable case is made out and impugned order needs interference in the interest of justice.

6. In light thereof, the Application is allowed in terms of clause (a) and (b). Leave to file appeal is granted. Appeal is allowed. Impugned Order is set aside and the proceeding of S.C.C. No. 748 of 2010 is restored to the file of the Judicial Magistrate First Class, Sangli for hearing in accordance with law.

7. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)