

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

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**CRIMINAL APPEAL NO.781 OF 2024
WITH
CRIMINAL APPEAL NO.782 OF 2024
WITH
CRIMINAL APPEAL NO.783 OF 2024
WITH
CRIMINAL APPEAL NO.784 OF 2024
WITH
CRIMINAL APPEAL NO.785 OF 2024**

Bhaghirth C. Arya

Age : 65 Years, Residing at : B2,
Rizvi Park, Altamound Road,
Mumbai : 400026.

(Through its Authorised Representative: **...Appellant**
Sitaram N. Shetty) **(Original Complainant)**

Versus

1. **State of Maharashtra** **...Respondent No.1**
2. **Ajit Kamath**
Age : 48 Years, Residing at : 404,
ILA Apartments, Plot No.118,
Sector 04, Charkop, Kandivali (W), **...Respondent No.2**
Mumbai : 400067. **(Original Accused)**

Mr.Tushar Halwai a/w Mr.Ashray Dave i/b.Mr.Prasad C. Dhalwalkar:-	Advocates for Appellant.
Mr.Ashok Gawai:-	APP for Respondent No.1 -State.

CORAM : S. M. MODAK, J.

DATE : 1st OCTOBER 2024

P.C. :-

1. Heard learned Advocate for the Appellant-Complainant.
2. His 5 Complaints filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (“**NI Act**”) were dismissed by the Court of Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai on 2nd May 2022. It is, for the reason, cases are pending since long and evidence has not been adduced on that date. In fact, neither Complainant was present nor his Advocate.
3. This Court has granted leave on 2nd July 2024. Inspite of substituted service on the Respondent No.2, he has not remained present.
4. These Complaints were filed in the year 2015. The plea of the Accused was recorded on 3rd August 2018. Thereafter, the matter was adjourned either at the instance of the Complainant or the Accused. On some occasion, Court was on leave. The Court has saddled cost of Rs.3,000/- (Rupees Three Thousand) on the Complainant on **15th November 2021**¹ for not proceeding with the matter. Instead of proceeding further on 2nd May 2022, he has not remained present. According to learned Advocate for the Complainant, the Advocate was

¹ Modified Portion

busy before some other Court and the Power of Attorney Holder of the Complainant was present in the Court on 2nd May 2022. However, this fact cannot be ascertained because it is not reflected anywhere in the order.

5. The cheques are issued towards the discharge of liability arising out of hand-loan in crores. It is true that as per the provisions of Section 256 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”), the Court can dismiss a Complaint, if there is no ground to adjourn the matter and if the Complainant is absent. Learned Magistrate has considered the absence of progress at the instance of Complainant right from recording of plea till the impugned order. But, it is also true that for two (2) years, there was a lock-down due to Covid.

6. The trial Court ought to have kept the matter for dismissal instead of dismissing it on that date. That could have afforded an opportunity to the Complainant. A case for restoration is made out.

Hence, order:-

ORDER

- (i) **The Appeals are allowed.**
- (ii) **The orders dated 2nd May 2022** passed by the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai

are **set aside**.

- (iii) The **Complaints are restored**.
 - (iv) The Complainant himself is directed to appear or through Power of Attorney Holder before the concerned Court on 21st October 2024.
 - (v) He is directed to secure the presence of the Accused by taking appropriate steps.
 - (vi) If, there is a **delay** on the part of the **Complainant in proceeding with the matter**, the trial Court is at liberty to **impose exemplary cost of last least Rs.10,000/- (Rupees Ten Thousand)**.
 - (viii) **The hearing of the cases is expedited.**
7. In view of the above, **all the Appeals are disposed of.**

[S. M. MODAK, J.]