



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 38 OF 2024

Azam Khan Asalam Khan

VERSUS

Shaikh Feroz Shaikh Yusuf

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Mr. D. S. Patil, Advocate for Appellant

Mr. M. A. Sheikh, Advocate for Respondents

CORAM : ABHAY S. WAGHWASE, J

DATE : NOVEMBER 26, 2025

PC :

1. Complainant in present Application is questioning the order of dismissal passed by learned Additional Chief Judicial Magistrate, Aurangabad in S.C.C. No. 4587/2018 dismissing the complaint under Section 138 of the Negotiable Instruments Act (N.I. Act) and acquitting accused.

2. Learned counsel for the applicant point out that Section 138 of N.I. Act proceedings were initiated by applicant on 08.06.2018. That, Even exercise of verification was done by Trial Court and process was also issued. However, thereafter, there was application by accused before the Court seeking time as some amicable settlements said to be in progress. Thereafter, due to on set of Covid, Courts were not functioning, That, finally directly on 09.11.2023 Court posted the matter for dismissal and on account of absence of the complainant, matter has been dismissed for want of

prosecution. He submits that complainant is not at fault, he is ready to workout the matter. He, therefore, urges for leave to file appeal.

3. Learned counsel for respondent would submit that complainant failed to prosecute the matter and as there was no evidence from complainant side for many year, Trial Court rightly dismissed the case for want of prosecution.

4. Taking above circumstances under consideration and the fact that Trial Court had undertaken the exercise of verification of complainant and had issued process, it suggests that Trial Court was convinced that accused is required to be called upon to face charges. However, after posting matter for dismissal on the next date, order has been given effect to. Therefore, in the interest of justice, prayers for leave required to be allowed. Hence, I proceed to pass following order:

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands admitted.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)