

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

970 CRIMINAL APPEAL NO. 786 OF 2024

**VILAS BHAURAO BHAMRE
VERSUS
AVINASH BANSILAL NERKAR AND ANOTHER**

...

Mr. Chetan Choudhari, Advocate for the appellant.

Mr. Sumit Kalaskar, Advocate for respondent No.1.

Mr. D.J. Patil, A.P.P. for respondent No.2/State.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 4 MARCH 2025.

ORDER:-

1. Heard rival submissions.
2. The appeal is filed by the appellant / original complainant challenging the order dated 08.02.2024 passed by the learned Judicial Magistrarte, First Class, Court No.2, Dhule i.e. the learned trial Court, whereby the Criminal Complaint bearing S.C.C. No. 1904 of 2021 filed by him under Section 138 of Negotiable Instruments Act ("N.I. Act" for short) has been dismissed for default.
3. The learned Counsel for the appellant/complainant submits that the learned trial Court acted too hastily for dismissing the complaint for default. According to him, the Roznamas on record indicate that the complainant was absent

on two occasions, but prior to that he was prosecuting the case diligently.

4. On the contrary, the learned Counsel for the respondent No.1/accused strongly submits that the appellant/complainant was in fact negligent in prosecuting the case. He pointed out that the learned trial Court had in fact given sufficient opportunity to complainant for leading the evidence, but he himself remained absent for no reason. As such, he prayed for dismissal of the appeal.

5. Admittedly, under the impugned order dated 08.02.2024, the complaint under Section 138 of N.I. Act lodged by present appellant/complainant has been dismissed for default. However, the Roznamas on record indicate that prior to the two dates on which the complainant was absent, he was very much attending the court. Further, the impugned order has closed doors for the complainant without giving him any opportunity to contest the matter on merit. Under such circumstances, certain leniency has to be shown to the appellant to that effect. As such, the appeal needs to be allowed by directing the complainant to proceed with the case diligently. Thus, the appeal stands allowed and the impugned order dated 08.02.2024 is hereby set aside and S.C.C. No.

1904 of 2021 stands restored to it's original stage. The appellant/complainant is directed to appear before the learned trial Court on or before 21.04.2025 and he shall prosecute the case diligently. The learned trial Court, after appearance of the appellant/complainant, may secure the presence of respondent No.1/accused. The fees of the appointed Advocate for respondent No.1/accused is quantified to Rs. 3,000/-, to be paid by Legal Services Authority, Aurangabad.

6. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)