



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**957 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 174 OF
2024**

S M THORMOTE PATIL PETROLIUM, PRO. NARESH MADHAVRAO
PATIL

VERSUS

RAJU @ RAJKUMAR CHANDRASHEKHAR KASAPNUR

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Advocate for Appellant : Mr. Rahul Pandhari Cheble

Advocate for Respondent : Mr. D. S. Patil

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 10 JULY 2025

PER COURT :-

1. Heard both sides.
2. The applicant/original complainant is seeking leave to file appeal against dismissal of the complaint bearing SCC No. 545 of 2019 filed under Section 138 of the Negotiable Instruments Act, 1881 by learned JMFC (Court No2), Latur vide order dated 22.10.2024. Said order reads as under :

The complainant has filed the present complaint U/s. 138 of the Negotiable Instruments Act, 1881. It is fixed for dismissal order. Record seems that, plea was recorded on 01.12.2023. Thereafter, it is posted for evidence. The complainant filed adjournment application on 05.03.2024, 08.08.2024, 24.09.2024.

2. *Today, the complainant is absent. His counsel filed again adjournment application without any sufficient reason. It means complainant is not interested to proceed with the matter.”*

3. Learned counsel concedes that on 05.03.2024 and 08.08.2025, applicant sought adjournment because he was out of station on those dates. He further submits that on 24.09.2024 the Advocate for the applicant was not available due to his personal work and on 22.10.2024, applicant's Advocate was busy in another matter in Udgir Court. Learned counsel pointed out that, learned JMFC, Latur has, on satisfaction that *prima facie* case is made out, issued process against the respondent. However, on 22.10.2024, due to absence of either applicant or his Advocate on the above respective dates, straightway dismissed the complaint.

4. On the contrary, learned counsel for the respondent/accused opposed the application on the ground that sufficient opportunity was given to the complainant but he failed to prosecute the complaint.

5. It seems that the learned Magistrate has recorded earlier adjournments sought by the applicant and the adjournment application again filed on the date of impugned order without any

sufficient reason, and by observing that complainant is not interested to proceed with the matter, dismissed the complaint by invoking powers under Section 256 of Cr.P.C. and acquitted the accused. Therefore, accused seems to be acquitted on sole ground of non prosecution. Learned counsel for the applicant submits that henceforth applicant will be diligent in conducting the matter without fail. Considering the above, as a fair opportunity, leave is required to be granted. Hence the following order :

ORDER

- I. The application is allowed.
- II. Leave is granted to file Appeal.
- III. Registry to register the Appeal.
- IV. List the Appeal for further consideration on 15.07.2025.

[ABHAY S. WAGHWASE, J.]

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