

Shailaja

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

CRIMINAL APPLICATION NO.13 OF 2024

[FOR LEAVE TO FILE APPEAL]

Bapurao Vitthal Deshmukh	]	Applicant
Vs.		
Shankar Reva Jadhav and another	]	Respondents

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Mr. S.S. Panchpor a/w Mr. Aashay Rabad, for Applicant.

Mr. P.P. Jadhav, A.P.P, for Respondent – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 20th January, 2025.

P.C:

1. By this application, the applicant seeks special leave to appeal against the impugned order rendered by the Judicial Magistrate First Class, *Karmala* below Exhibit 1 in S.C.C. No.528 of 2016 on 19th December, 2022, thereby dismissing the complaint and acquitting the respondent No.1 – accused for the offence punishable under section 138 of the Negotiable Instruments Act, 1881.

2. Heard learned Counsel for the applicant.

3. At the outset, learned Magistrate dismissed the complaint under Section 256 of the Code of Criminal Procedure, 1973 on the ground that the complainant has not taken steps in order to proceed with the matter. She further observed that the matter is old and, therefore, there is no point in keeping the matter pending without further progress.

4. Learned Counsel for the applicant has invited my attention to the *Roznama* of the Trial Court which falsify the impugned order passed by the Magistrate.

5. Certified copy of the *Roznama* dated 12th February, 2020 indicates that the complainant as well as his Advocate were present, however, accused was absent. The complainant has filed an application “Exhibit D-19” for submitting documents as well as “Exhibit C-21” in the form of an Affidavit in lieu of his examination-in-chief. The same was accepted by the Court and the matter came to be adjourned to 12th March, 2020. On that day, application (Exhibit D-22) for issuance of warrant against the accused was moved which was granted by the learned Magistrate and thereafter the matter was adjourned till 15th April, 2020.

Execution of warrant was awaited. On 20th September, 2022, the complainant and his Advocate were present but the accused was absent. Again, an application (Exhibit-27) for issuing arrest warrant against the accused has been granted by the Trial Court.

6. It appears that thereafter on the next date i.e on 6th October, 2022, the complainant was absent. On 8th November, 2022, the Magistrate was on leave and thereafter suddenly on 19th December, 2022 by the impugned order, the complaint came to be dismissed.

7. The order impugned is, *prima facie*, *sans* application of mind by the Magistrate ignoring the *Roznama*. The complainant has been prosecuting the complaint diligently. The Magistrate ought to have seen the *Roznama* before passing the impugned order. The impugned order, therefore, needs to be quashed and set aside as it is *ex facie* perverse. Accordingly, the impugned order is quashed and set aside. Acquittal of the accused is also set aside and the accused is directed to remain present before the learned Magistrate on 31st January, 2025 and shall execute a fresh bond.

8. The complaint is restored to its original number on the file of the J.M.F.C. *Karmala*. The parties shall appear before the learned J.M.F.C on 31st January, 2025. Thereafter, the Magistrate shall proceed further in accordance with law without granting unnecessary adjournments to any of the parties.

9. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]