

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

**CRIMINAL APPLICATION NO.162 OF 2019
(LEAVE TO FILE APPEAL)**

Atul Abaso Kenjle Applicant

V/s.

Sambhaji Rambhau Shinde And Anr. Respondents

NILAM
SANTOSH
KAMBLE
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NILAM SANTOSH
KAMBLE
Date: 2025.05.05
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Mr.Amit Mane i/b Mr.Kirankumar Phakade, for the Applicant.
Mr.S.H. Yadav, APP, for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 02nd MAY 2025

P.C:-

. Heard learned counsel for the Applicant and learned
APP for the Respondent-State.

2. Though, respondent No.1 is served none present for
the respondent No.1. On last date last chance was given to the
respondent No.1 to go on with the matter. Today also none
present for respondent No.1, hence I am deciding this matter on
merit.

3. The Joint Judicial Magistrate, F.C., Koregaon (for
short “the Trial Court”) has dismissed the complaint filed by the

applicant under Section 138 of Negotiable Instruments Act, 1881 (“N.I.Act”) on the ground of non presence of complainant and his Advocate. The Trial Court has passed order below Exhibit-1 observing that for long dates complainant and his Advocate are absent and they have not taken steps for securing the presence of the accused. On that ground the Trial Court has dismissed the complaint filed by the applicant and has acquitted the accused under Section 256 of Code of Criminal Procedure, 1973.

4. Perused the roznama produced on record. It shows that Advocate for the applicant was pursuing the matter, but this fact is not considered by the learned Trial Court and in haste, has dismissed the complaint. The order passed by the Trial Court appears to be perverse, hence I pass following order.

ORDER

- (i) The application is allowed.
- (ii) The order dated 15.02.2019 passed by the Joint Judicial Magistrate, F.C., Koregaon is quashed and set aside.
- (iii) The matter is restored before the Trial

Court for fresh hearing.

(iv) The Complainant shall pay cost of Rs.5,000/- to Tata Cancer Hospital, Mumbai.

(v) The complainant shall appear before the Trial Court on 8th May, 2025 at 11:00 a.m. and take necessary steps.

(SHIVKUMAR DIGE, J.)