

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 2154 OF 2023**

Samir Shrinivas Kale

... Applicant

Versus

M/s. Mandar Electricals (through Its Proprietor
Mandar Milind Kachrekar) & Anr.

... Respondents

.....

Mr. G.J.Jain, Advocate for the Applicant.

Mr. Ashish Bhandari, Advocate for Respondent No.1.

Mr. K.C.Shinde, APP for the State.

CORAM : SHIVKUMAR DIGE, J.**DATED : 3rd APRIL, 2025.****P. C. :**

1. Heard learned counsel for the applicant, learned counsel for respondent No.1 and learned APP for the State.

2. The J.M.F.C., Guhagar (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/respondent No.2 under Section 256 of Code of Criminal Procedure, 1973.

3. 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 22.06.2023 passed by the J.M.F.C., Guhagar is quashed and set aside.
- iii. The matter is restored before the Trial Court for fresh hearing.
- iv. The complainant shall appear before the Trial Court on 21st April, 2025 at 11:00 a.m. and take necessary steps.