

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 61 OF 2025

Prakash S/o. Hemraj Gadiya

... Applicant

Versus

Ravi Jabbar Sharma & Anr.

... Respondents

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Adv. Chaula Solanki a/w. H. H. Nagi, Mr. Sajid Hussain, Ms. Rinky Kanojia, Mr. Niranjana Pradhan, Lekha Srigarla i/b. Nagi & Associates, Advocates for the Applicant.

Mr. Prasanna P. Malshe, APP for the Respondent No.2 -State.

CORAM : SHIVKUMAR DIGE, J.

DATED : 3rd APRIL, 2025.

P. C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. Learned counsel for the applicant submits that respondent No.1 is served and she has filed affidavit of service.
3. The Metropolitan Magistrate Court, Andheri (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.

3. Perused the roznama produced on record. It shows that that on earlier dates of passing the dismissal order, the Advocate for the applicant was present. 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 & disposed of.
- ii. The order dated 11.02.2025 passed by the Judicial Magistrate (First Class) 58th Court, Bandra, Mumbai 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.

(SHIVKUMAR DIGE, J.)