VINA ARVIND KHADPE
Digitally signed by VINA ARVIND KHADPE
Date: 2026.10.15 17:33:50 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.2095 OF 2023

Shri Manish Mahesh Goswami … Applicant
Versus
The State of Maharashtra and anr … Respondents

***

Mr. Mandar Goswami (through VC) a/w Mr. Siddhant Choudhari for Applicant.
Mr. Balraj Kulkarni, APP for Respondent-State.
Mr. Khushal S. Patil i/b. Mr. Sufiyan Sayyed for Respondent No.2.

***

CORAM : M.M. SATHAYE, J.
DATE : 15 OCTOBER, 2026

P.C. :

1. Heard learned Counsel for the parties.

2. The Applicant is complainant in proceedings arising out of Section 138 of the Negotiable Instruments Act, 1881. Respondent No.2 is the accused.

3. The Applicant is seeking leave to file appeal to challenge the order of acquittal dated 13.02.2023 passed by the Additional Chief Judicial Magistrate, Nashik under order below Exhibit 1 in S.C.C. No.3808 of 2015. By the said impugned order, the complaint is dismissed for default resulting in acquittal of Respondent No.2 / accused.

4. Learned Counsel for the Applicant submitted that the roznama

shows that his Advocate was continuously attending the matter and therefore, dismissal for default was a result of absence on one particular date. He submitted that there was no negligence.

5. On the other hand, learned Counsel for Respondent No.2 / accused supported the impugned order contending *inter alia,* that the old complaint was kept pending and nobody was attending the matter, therefore, it was rightly dismissed.

6. I have considered the submissions and perused the record.

7. The impugned order records that the matter was fixed for dismissal on 08.09.2022, however on 15.10.2022, an adjournment was sought and thereafter the complainant did not take pain to appear in the matter. However, apparently, on bare perusal of the roznama, it appears that on 15.10.2022 and 06.12.2022, the Advocate for the complainant was present. On 06.12.2022, it is recorded that learned Judge was on leave and matter was adjourned as 'partial evidence'. Thereafter, on 13.02.2023, since the complainant and his Advocate were absent, the complaint was dismissed for default. In that view of the matter, the complainant cannot be said to have been negligent in prosecuting his complaint.

8. For that reason, the impugned order of acquittal requires re-consideration and the case for grant of leave is made out.

9. Accordingly, application is allowed. Applicant is permitted to file an appeal against the impugned order of acquittal.

10. **Appeal is admitted.** Learned Counsel for Respondent No.2 waives service of admission.

11. Considering that the acquittal is a result of dismissal in default, liberty is granted to the Applicant to move for immediate disposal of of the Appeal.

(M.M. SATHAYE, J.)