

(2013) 08 BOM CK 0007
In the Bombay High Court
Case No : Criminal Appeal No. 284 of 2013

Vitthal

APPELLANT

Vs

Dhiraj

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 1698

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—Both the sides are heard for final disposal. The learned counsel for the appellant/complainant has produced the copy of Roznama of S.T.C. No. 58 of 2009, which was pending in the Court of Judicial Magistrate, F.C., Ahmedpur.

2. The private complaint was filed u/s 138 of the Negotiable Instruments Act. The evidence was closed by the complainant-side on 2nd July, 2011 and the matter was kept for recording statement of accused u/s 313 of Cr.P.C. After that day, accused did not turn up. The complainant applied for issuing non-bailable-warrant on 10th August, 2011, and accordingly non-bailable-warrant came to be issued. On 12th October, 2011, report in respect of non-bailable-warrant was received and the police informed that the non-bailable-warrant could not be executed. It appears that, after that day the matter was kept for taking further steps on 13th January, 2012, 13th February, 2012 and 13th March, 2012. It appears that the complainant and his Advocate did not remain present, and ultimately on 14th May, 2012, the complaint came to be dismissed. Roznama dated 14th May, 2012 contains relevant portion of order of dismissal of complaint by the Magistrate. Learned counsel for the accused supported the order of the learned Magistrate by submitting that for so many occasions the complainant and his Advocate did not turn up and did not take proper steps, and so, there is no need to interfere in the order made by the Magistrate. This proposition is not at

all acceptable. If such tactics are allowed to be played, every accused will play such tactic and the complainant will never get justice. In view of the aforesaid circumstances, this Court holds that the order made by the learned Magistrate needs to be set aside and the matter needs to be remanded back to the Court of Judicial Magistrate.

ORDER

- 1] The appeal is allowed.
- 2] The order made by the Judicial Magistrate, First Class, Ahmedpur, in S.T.C. No. 58 of 2009 of dismissal of complaint stands set aside.
- 3] S.T.C. No. 58 of 2009 stands restored to its original number in the same Court.
- 4] The parties are to appear before the Judicial Magistrate, First Class, Ahmedpur on 10th September, 2013.