



**CRL.A No. 100313 of 2020**

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 19TH DAY OF APRIL, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR**

**CRIMINAL APPEAL NO. 100313 OF 2020 (A-)**

**BETWEEN:**

1. THE MANAGING DIRECTOR,  
INDIAN CANE POWER LTD UTTUR,  
TQ. MUDHOL, DIST. BAGALKOTE,  
REP. BY ITS MANAGING DIRECTOR  
NOW AUTHORIZED OFFICER,  
SRI.RAJAKUMAR S. KALLIGUDDI,  
AGE. 38 YEARS, OCC. SERVICE ICPL,  
R/O. UTTUR, TQ. MUDHOL,  
DIST. BAGALKOTE, PIN. 587313.

...PETITIONER

(BY SRI BAHUBALI N. KANABARGI, ADVOCATE)

**AND:**

1. SHIVAJI DAGADU MANE  
AGE. 52 YEARS,  
OCC. CONTRACTOR OF  
HARVESTING GANG,  
R/O. DARUR,  
TQ. DARUR, DIST. BEED,  
STATE MAHARASHTRA, PIN. 416202.

...RESPONDENT

THIS CRIMINAL APPEAL FILED U/S 378(4) OF CR.P.C. SEEKING TO SET ASIDE ORDER OF DISMISSAL OF COMPLAINT AND ACQUITTED ACCUSED DATED 10.10.2019 IN C.C. NO.111/2014 ON THE FILE OF PRL. SENIOR CIVIL JUDGE, MUDHOL, REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, AND RESTORE THE COMPLAINT ON ITS FILE.





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THIS APPEAL COMING ON FOR ORDERS THIS DAY, THE COURT  
MADE THE FOLLOWING:

**JUDGMENT**

The petitioner had filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973 against the respondent-accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, 'the Act'). The learned Magistrate, on 07.05.2014, after taking cognizance of the offence, issued summons to the accused and the same was duly served on the accused. Since the respondent-accused remained absent, the learned Magistrate ordered issuance of non-bailable warrant against the accused and the same was returned with an endorsement "unexecuted". Once again, the non-bailable warrant was issued and the same was returned with an endorsement "unexecuted" since the accused was not residing at the given address.

2. The case was posted for taking steps to issue NBW to the accused. On the said date the complainant



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remained absent. The learned counsel for the complainant prayed for time to take steps for issuing NBW through PSI Mudhol. The learned Magistrate dismissed the complaint for non-prosecution on the ground that the complainant has not secured the presence of accused since from 2014 and no purpose will be served by re-issuing NBW. Taking exception to the same the complainant is before this Court.

3. I have considered the submissions made by the learned counsel for the appellant/complainant.

4. Though the summons were initially served on accused, he did not choose to appear before the learned Magistrate. Thereafter NBWs were issued against the accused again on several occasions. However the NBWs were returned with an endorsement 'un-executed', since the accused was not residing on the given address.

5. The learned Magistrate without providing any opportunity to the complainant to file an application under Section 82 of Cr.P.C. for issuing proclamation at the very



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same address to secure presence of the accused has passed the impugned order dismissing the complaint for want of prosecution and the same is not sustainable in law Accordingly, I pass the following:

ORDER

- i) *This criminal appeal is allowed.*
- ii) *The impugned order dated 10.10.2019 passed by the Principal Senior Civil Judge, Mudhol in C.C.No.111/2014 is hereby quashed and the complaint is restored to its original file.*
- iii) *Learned counsel for the appellant/complainant is permitted to file an application under Section 82 of Cr.P.C. to issue proclamation against the accused for securing his presence on or before next date of hearing. If the said application is filed, the learned Magistrate to consider the said application and pass appropriate order in accordance with law.*

**Sd/  
JUDGE**

SSP