

**ORDER BELOW EXH.1 in S.T.C. No. 37/2010**

[Passed on 29<sup>th</sup> December, 2014]

1. This is a criminal case instituted otherwise than on police report filed by Agasti Sarva Seva Sangh, Agastinagar, Akole against accused for the offense punishable under Section 138 of the Negotiable Instrument Act, 1881 and under section 420 of the Indian Penal Code, 1860. However, process is issued against the accused only in respect of the offense punishable under section 138 of the N. I. Act, 1881. In this case, the accused is absent since long. A process was issued several times against the accused. It is further pertinent to note that warrant against accused is issued several times but not executed.

2. Further, in order to compel the appearance of the accused, proclamation under Section 82 of the Code of Criminal Procedure, 1973 was issued vide **Exh. 19** and thereby the report was also called about the property of the accused. The police have not filed information regarding property of accused.

3. It is further pertinent to note that it has been held by our Hon'ble High Court of Judicature of Bombay Bench At Aurangabad in the case of same complainant in respect of the same nature of the offense between **AGASTI SARV SEVA SANGH, AGASTINAGAR, AKOLE V/s. ROHIDAS DHARMA RATHOD** in **Criminal Revision Application No.27 of 2014** dated 5th day of February, 2014 which was filed against the dismissal order passed in S.T.C. No 333/2008 and it has been held in para no. 6 :-

*" The impugned order is patently illegal. There is no provision in the Code of Criminal Procedure, which would permit the Magistrate to dismiss a complaint in default despite the presence of the complainant and his advocate. If at all, the presence of the accused was not being secured, the Magistrate could have kept the case on dormant file."*

4. Further, in the present case, before keeping the matter in the dormant file, the complainant has produced his evidence affidavit **Exh. 20** and has also produced documentary evidence and closed the evidence by filing evidence close pursis **Exh. 21**. Hence, in my considered opinion as discussed above the presence of the accused cannot be secured in future and therefore, it will be appropriate to keep the case on dormant file. Hence, I pass the following order.

**O R D E R**

- [i] The record and proceeding of the present case be placed on dormant file.
- [ii] Issue standing arrest-warrant against the accused.
- [iii] The record and proceeding of the present case be sent to the Record Room after the expiry of a year's period from today.

Date:- 29/12/2014.

[J. R. Mulani]  
J.M.F.C. Akole.  
[Court No. 2]