

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 682 OF 2014

Sau. Mangalabai Ashokbhai Patel
Age – 50 years, Occupation – Service,
R/o – Gat No.54/2, Plot No.28,
Nr. Shiva Apartment,
Shiv Colony, Jalgaon

.. Applicant
(Orig. Complainant)

VERSUS

Shri Ganesh Bandu Badgujar
Age – 45 years, Occupation – Agriculture,
R/o – At & Post – Kandholi,
Taluka Erandole, Dist. Jalgaon

.. Respondent
(Orig. Accused)

Mr. M.M. Bhoakrikar, Advocate for the applicant
Mr. V.B. Patil, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 26/11/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by dismissal-in-default of the complaint filed for the offence punishable under section 138 of the Negotiable Instruments Act, the present applicant/original complainant wants to prefer an appeal and, therefore, application for leave to file appeal is filed.

3. The checkered history of the case would show that the complaint of the present applicant/appellant was dismissed in default for her non-appearance by the learned Judicial Magistrate First Class, Jalgaon on 08/11/2010 and the respondent was acquitted of the offence. Thereafter, the applicant preferred an appeal before the Additional Sessions Judge, Jalgaon. The same was allowed on 16/04/2013 subject to payment of costs of Rs.5000/- and the proceeding was restored to the file of the learned Judicial Magistrate First Class, Jalgaon. Aggrieved by the said order, the respondent preferred Criminal Revision Application no.100 of 2013 in this Court. The same was allowed by this Court on 09/12/2013, thereby holding that the appeal before the Sessions Court was not maintainable. However, it was also observed that the original complainant i.e. present applicant would not be prevented from filing an appeal in accordance with the provisions of section 378(4) of the Code of Criminal Procedure. Therefore, the present criminal application for leave to file appeal is filed.

4. The history of the criminal case before the learned Judicial Magistrate First Class, Jalgaon would show that the complaint was filed on 22/05/2009. Thereafter, the respondent appeared on 10/09/2009. Time to time the case was adjourned mostly on the application of the complainant. Lastly, on 17/8/2010, counsel for the complainant-applicant filed application communicating thereby that the applicant was deputed on official training for a period between 01/05/2010 to 31/10/2010. Despite this, the case was adjourned to 27/10/2010 i.e. 4 days before the expiry of the training period with costs of Rs.200/-. Therefore, on 27/10/2010, counsel for the complainant again sought adjournment and the matter was posted to 08/11/2010. On that day, neither the complainant nor her counsel appeared and, therefore, the impugned order was passed.

5. Mr. M.M. Bhokarikar, learned counsel for the applicant submits that the above history would show that the complainant was not negligent but due to her deputation on official training, she was required to remain absent in the Court. Despite this, the Court

adjourned the matter by imposing costs and only on one occasion, finding that the counsel or the complainant is absent, the case came to be dismissed and the respondent came to be acquitted.

6. On the other hand, Mr. V.B. Patil, learned counsel for the respondent submits that the record would show that the respondent was all the while present in the Court on almost all dates. Without any supporting documents regarding deputation of the applicant for training, the learned Judicial Magistrate First Class has believed the same and adjournment was granted. Thereafter, due to absence the Court rightly dismissed the complaint and acquitted the respondent.

7. Mr. V.B. Patil relies on the ratio in the cases of ***Kuppaiyandu Muthu Rajan Vs. Dhanraj H. Rathod*** 2010(1) Bom.C.R. (Cri.) 864 and ***Sonam Finance Lease Co. Pvt. Ltd. Vs. Vasantsingh Shankar Narayansingh & anr.*** 2008(2) Bom. C.R. (Cri.) 315.

8. Reading of both the authorities would show that on facts, since either repeated applications for adjournment were filed or there was no explanation for

absence from the side of the complainant, it was held that the complaint was rightly dismissed and the respondent was acquitted therein.

9. Upon hearing both sides, in my view, the present case would show that the complainant/applicant is a Government servant. The complainant was unable to attend the Court as she was deputed on training. Only on third occasion, adjournment application was filed on the ground that after the training period was over, complainant suffered from malaria. Learned Judicial Magistrate First Class however did not agree with the same and the impugned order was passed.

10. Taking into consideration all these facts, in my view, since the applicant-complainant is litigating the case of dishonour of the cheque of Rs.1,62,000/-, in my view, there would be no harm in case the complaint is restored to file upon maintaining the direction of the learned Additional Sessions Judge in the appeal that costs of Rs.5000/- would be paid and on further condition that upon restoration of the complaint, the complainant-applicant shall close her

evidence within a period of four (4) months from the date of appearance before the learned Judicial Magistrate First Class, Jalgaon.

11. In the result, present application for leave to file is hereby granted. Appeal be registered as per due procedure of law. Upon registration, the appeal stands admitted and for the reasons already forwarded, the appeal is also allowed.

12. The impugned order of the learned Judicial Magistrate First Class, Jalgaon dated 08/11/2010 is hereby set aside subject to the payment of costs of Rs.5000/-, as awarded by the learned Additional Sessions Judge, Jalgaon in the criminal appeal and further subject to the condition that the applicant shall conclude her evidence during the period of four (4) months from the date of appearance before the learned Judicial Magistrate First Class, Jalgaon.

13. Both the parties are directed to appear in the trial Court on 15/01/2016.

14. Criminal Application and the Criminal Appeal stand disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/