

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 69 OF 2014

Sahebrao Daulat Mulmule,
age 51 years, occ. Driver,
R/o Narayanwadi, Plot No.8,
Near Chalisgaon Railway Line,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon

...Applicant

VERSUS

1] Purishottam Bakelal Agrawal,
age major, occ. Business,
R/o Agrawal Dairy, Bhadgaon Road,
Pachora, Tq. Pachora,
District Jalgaon,

2] The State of Maharashtra,
through incharge police officer,
Police Station Pachora,
Dist. Jalgaon

...Respondents

.....
Shri V.S.Undre, advocate for applicant
Shri J.M.Murkute, advocate for respondent no.1
Shri S.A.Ambad, A.P.P. for respondent no.2
.....

CORAM : V.M.DESHPANDE, J.

DATED : 18th February, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. With the

consent of the learned counsel for the parties heard finally.

2] The learned counsel Shri Undre submits that the applicant faced proceedings under Section 138 of the Negotiable Instruments Act initiated by respondent no.1. The said proceedings were registered as Summary Criminal Case No. 338 of 2005. The learned Judicial Magistrate, First Class, Pachora, on 14.10.2011 was pleased to hold the present applicant guilty for the said offence and the applicant was directed to suffer simple imprisonment for 3 months.

The applicant preferred an appeal before the Appellate Court, bearing Criminal Appeal No. 99 of 2011. The said appeal also came to be dismissed by the Additional Sessions Judge, Jalgaon on 13.2.2014. The order dismissing the appeal reads as under :-

“ Since Dt. 27.03.2012 steps not taken by the appellant to serve the notice to Respondent. Hence appeal is dismissed. ”

3] From the afore said order, it is crystal clear that the applicant failed to take necessary steps to serve the respondent. The approach and attitude of the present applicant is deprecated, but at the same time the learned appellate court ought not to have dismissed the appeal in default. It was open for the appellate court to decide the said appeal on its own merits.

4] In that view of the matter, the order, dated 13.2.2014 passed by the appellate court is required to be set aside. There is one reason also for setting aside the said order, in view of the submissions made by Shri Undre, learned counsel the applicant has already deposited compensation amount of Rs.40,000/-. Out of that, he has deposited Rs.30,000/- in this court and Rs.10,000/- before the learned appellate court.

5] Respondent no.1 shall be entitled to withdraw the said amount of compensation deposited by the present applicant with an understanding that in case the present applicant succeeds in the appeal before the appellate court, the said amount will be refunded to the present applicant.

6] With the above observations, present Criminal Revision Application is allowed. The order, dated 30.2.2014, passed by the Additional Sessions Judge, Jalgaon in Criminal Appeal No. 99 of 2011 is hereby quashed and set aside. Criminal Appeal No. 99 of 2011 is restored to file.

Since Shri Murkute, learned counsel is appearing for respondent no.1/original complainant, submits that he can waive service of Criminal Appeal No. 99 of 2011. Statement accepted. In that view of the matter, service on the respondent in Criminal Appeal No. 99 of 2011 is complete.

The parties are directed to appear before the Additional Sessions Judge, Jalgaon on 5.3.2015 and the learned Additional Sessions Judge shall decide Criminal Appeal No. 99 of 2011 within a period of six months from the date of receipt of this order, in accordance with law, after giving opportunity of hearing to both the parties to the appeal.

[V.M.DESHPANDE, J.]

dbm/crra69.14