

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2323 OF 2014
(Rameshwar Motiram Gaikwad Vs. The State of Maharashtra
and another)

Mr. D.A. Naik, Advocate for the applicant
Mr. V.S. Badakh, A.P.P. for the respondent-State
Mr. P.K. Lakhotiya, Advocate for respondent No. 2

CORAM : M.T. JOSHI, J.
DATE : 14/10/2015

ORAL ORDER :

1. Learned counsel Mr. P.K. Lakhotiya submits that he has instructions to appear in this matter on behalf of respondent No. 2 and files vakalatnama, which is accepted on record and marked "X" for the purpose of identification.

2. Heard both sides.

3. Aggrieved by the dismissal of the complaint in default, filed against the respondent No.2 for the offence punishable under section 138 of the Negotiable Instruments Act, the present applicant wants to prefer an appeal and therefore, the present application for grant of leave to file appeal is filed.

4. The record would show that for dishonour of his cheque for Rs. Ten lacs, the present applicant has filed the complaint on 23.04.2012. Thereafter continuously, he remained absent for his verification till 22.11.2013 though various dates were given. Therefore, ultimately the complaint came to be dismissed in default. As no process was issued to the respondent No.2, he did not appear in the said complaint proceeding.

5. The learned counsel for the applicant submits that due to communication gap, the complainant could not remain present. The record would show that not only an amount of Rs. Ten lacs was paid by him to the respondent No.2, but even he was required to deposit the court fees of Rs. 20,000/- for filing the complaint before the learned Judicial Magistrate First Class. He further makes a statement that the complainant would deposit an amount of Rs. 5000/- with the District Legal Services Authority, Aurangabad within a period of four weeks from the date of this order. He further makes a statement that the applicant/complainant would be diligent in attending the proceeding before the trial court.

6. Considering all the facts on record, leave to file an appeal is hereby granted. The application is accordingly allowed and disposed of.

7. The office to register the appeal as per due procedure of law. Upon registration of the appeal, it stands admitted and heard. Learned A.P.P. waives service of notice for the respondent/State and learned counsel Mr. P.K. Lakhotiya waives service of notice for respondent No.2 upon admission of the appeal.

8. For the reasons already forwarded, the appeal is hereby allowed. The order dated 22.11.2013, passed by the learned Judicial Magistrate First Class (13th Court), Aurangabad in S.C.C. No. 1806/2012 is hereby quashed and set aside. Instead, the case is remanded back to the learned Judicial Magistrate First Class for decision on merit afresh.

. The applicant/complainant to appear before the learned Judicial Magistrate First Class, Aurangabad on 23rd November, 2015.

9. The record and proceedings be remitted back to the court of learned Judicial Magistrate First Class, Aurangabad.

[M.T. JOSHI]
JUDGE

npj/criapln2323-2014