

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6776 OF 2013
AND
CRIMINAL APPLICATION NO. 6775 OF 2013

Shri Rameshwar Sahakari Sakhar
Karkhana Ltd.

.. Applicant

Vs.

Shivaji Jaggannath Sudke

.. Respondent

Mr. Pradeep B. Salunke, Advocate for the applicant
Mr. P.A. Bharat, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 20/03/2015

ORAL ORDER :

1. Heard.

2. For the reasons stated in the application, delay of 20 days caused in filing application for leave to file appeal, is condoned. Criminal Application no. 6776 of 2013 stands allowed accordingly.

3. Upon hearing learned counsel for the parties, leave to file appeal is hereby granted. Criminal Application no.6775 of 2013 seeking leave to file appeal is allowed. The appeal be registered.

4. The appeal stands admitted upon registration thereof. With consent of both sides, the appeal is taken up for hearing.

5. The complaint of the present applicant for the offence punishable under section 138 of the Negotiable Instruments Act was dismissed by the learned Judicial Magistrate First Class, Bhokardan solely on the ground that the Police could not serve non-bailable warrant on the present respondent, who remained absent in the proceedings despite earlier service of the summons. Thus, the present applicant is punished for the negligence of the Police time and again. In the circumstances, the learned Judicial Magistrate First Class ought to have taken action against the Police who failed to serve the non-bailable warrant on the respondent.

6. The respondent has appeared in the present proceedings. In the circumstances, the appeal is allowed. The order of the learned Judicial Magistrate First Class, Bhokardan is set aside. Both the sides are directed to appear before the learned Judicial

Magistrate First Class, Bhokardan on 20/04/2015. On that day, the respondent may apply for cancellation of the non-bailable warrant, which can be decided on merit by the learned Judicial Magistrate First Class, Bhokardan and to proceed with the complaint afresh.

7. In case, the respondent does not appear, the non-bailable warrant shall stand as it is and the learned Judicial Magistrate First Class, Bhokardan is directed to take strict action in case the respondent remains absent hereinafter.

[M.T. JOSHI]
JUDGE

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