

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 35 OF 2012

SHRI CONSTANTINO FERNANDES ... Applicant
Versus
SHRI MANISH BHIKU BHAI SHAH ... Respondent

Mr. P. P. Singh, Advocate for the applicant.

Coram:- U. V. BAKRE, J.

Date:- 11th February, 2015

P.C.:

Heard Mr. Singh, learned Counsel for the applicant.

2. By this application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the order dated 18/11/2011 passed by the learned IInd Additional J.M.F.C., Margao(Trial Court, for short) in Criminal Case No.237/OA/NI/2009/II, thereby dismissing the said complaint of the present applicant for non-prosecution.

3. The respondent was duly served before admission of this matter but despite the said service of notice he had remained absent. Considering the fact that the application was directed against the order dismissing the applicant's complaint filed under Section 138 of N.I. Act,1881 for default as well as for non-service of summons and the application was dismissed by this Court and the hearing was

expedited. The applicant took steps from time to time from service of the respondents after admission. However, service is still awaited from Gujarat Police Station.

4. The said criminal Case No.237/OA/NI/2009/II was filed by the applicant under Section 138 of the N.I. Act in respect of the cheque for an amount of Rs.6,80,000/-. After verification of the applicant the process was issued against the accused i.e. the respondent. It is seen that in the said Criminal Case also the accused could not be served though steps were taken by the complainant several time. It so happened that on 18/11/2011, the complainant was absent as well as his counsel due to which the matter was dismissed for non-prosecution.

5. Considering the nature of the complaint and the fact that the matter was dismissed for non-prosecution only because the complainant and his advocate was absent, though the accused otherwise was not yet served in the matter, I am of the view that the complainant should get opportunity in the matter to serve the accused so that the matter can be heard and disposed of on merit.

6. In view of the above, review application is allowed. The impugned order dated 18/11/2011 passed by the learned Trial Court in Criminal Case No. 237/OA/NI/2009/II is quashed and set aside.

7. The said Criminal Case No. 237/OA/NI/2009/II stands restored to the file of the learned Trial Court.
8. The learned Trial Court to proceed with the said matter from the stage at which it was pending as on 18/11/2011.
9. The complainant to appear before the Trial Court on 02/03/2015 at 10.00 a.m.
10. Application stands disposed of accordingly.

U. V. BAKRE, J.

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