

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.83 OF 2013

Shri Jagdishprasad Laxminarayan Jakhotia ..Applicant
Versus
State of Maharashtra and another. ..Respondents

WITH
CRIMINAL APPLICATION [ALP] NO.82 OF 2013

....
Mr. Vimlesh Singh, for the Applicant.
Mrs. P.P. Bhosale, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 17th JULY, 2015

P.C.

1. Heard rival submissions on both these applications for leave to file appeal challenging the acquittal of the respondent, who is same in both the cases. The acquittal is in the matter of offence punishable under Section 138 of Negotiable Instruments Act.

2. Considering the peculiar circumstances under which both the earlier complaints lodged by the present complainant came to be dismissed by the trial Court, both these applications are being disposed of by this common order and in fact after

ascertaining the scope of both the matters it is decided that even the appeals are required to be admitted and allowed for the reasons hereinafter being mentioned. Initially the present applicant filed two complaints against the same respondent, then accused, for taking action against him under Section 138 of Negotiable Instruments Act. Said complaints were for two different cheques which were dishonored. In Complaint No.1727 of 2007 the cheque amount was mentioned as Rs.2,23,869/- and the cheque number is mentioned 623750 dated 1.9.2007. In the second complaint bearing No.1728/2007 cheque is for the amount of Rs.50,000/- and the cheque number is 032534 dated 7.9.2007. Apparently, this position of dishonor of these cheques was clearly mentioned in both the complaints but when the matter was before the Court and when the affidavit in lieu of the examination-in-chief was filed on behalf of the complainant, an error has been committed and the amount and the cheque number and date of the cheque and other relevant information regarding dishonor of said cheque which is forming part of the first complaint was mentioned and detailed in the affidavit in lieu of examination-in-chief in another complaint and *vice versa*. As such, noticing this factual

position when the matter was before the trial Court, there was apparently no cross-examination of the complainant. Thereafter at the time of final disposal of both the complaints, which were then being heard and disposed of by the same Court, the trial Court specifically mentioned in the judgment that the complainant, present applicant had failed to establish the cases inasmuch as he has referred in his evidence in chief regarding some other different cheque. This apparently happened in both the cases and the trial Court dismissed both the complaints mentioning that there was no cause of action arisen for the complainant to initiate a proceeding under Section 138 of Negotiable Instruments Act as the evidence of the complainant did not match with the averments in the complaint. In fact by mere reading of both the complaints and both the affidavits filed by the original complainant it could have been ascertained by the trial Court that it was apparently a mistake committed while filing the affidavit and the relevant documents in a particular complaint. In fact, in the opinion of this Court, it was must for the trial Court to look into the matter and to ask the complainant to rectify the defect but instead of doing this the trial Court went on with the matter and dismissed both the

complaints. Definitely both the complaints were not dismissed on merits and they were dismissed only on this technicality. At this juncture it may be mentioned that initially it was the responsibility of the Advocate / Counsel for the complainant to see that proper documents and proper affidavits are filed in the Court in the respective complaints but apparently that has not been done. Subsequently there was at least opportunity for the applicant when this anomaly would have been brought to the notice during the cross-examination of the complainant. But curiously enough in both these matters before the trial Court, there is no cross-examination conducted on behalf of the respondent. Today during the arguments, learned Counsel for the applicant stated that this anomaly and filing of the documents and filing of the affidavits mentioning the details of another complaint, came to his knowledge only after passing of the judgment and order of acquittal. Whatever it may be, the facts remain that both the matters were dismissed by the same trial Court i.e. Court No.2, J.M.F.C., Khalapur, District – Alibag Raigad only on the technicalities.

3. In view of the above factual position, in the view of this

Court both the present applications for leave to file appeal are required to be allowed in the interest of justice and set right the anomaly practiced during the trial of both the cases before the concerned Judicial Officer. As such, both the applications for leave to file appeal are allowed. Both the appeals are admitted and also allowed. The matter is remanded back to the trial Court. Both the Criminal Case Nos.1727/2007 and 1728/2007 are restored to the file of the concerned J.M.F.C. at Khalapur with directions to deal with both these complaints by giving an opportunity to the complainant to rectify the mistake earlier committed by allowing him to file affidavit in lieu of evidence and the documents concerning respective complaints. Of course, the respondent / original accused also shall be given an opportunity to defend himself and the trial Court shall dispose of both the matters in accordance with law as expeditiously as possible. With these directions, both the present proceedings are disposed. Both the parties are directed to appear before the concerned trial Court on 10th August, 2015.

(A. R. JOSHI, J.)