

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.325 of 2015

RAJENDRA MANGALDAS DOCTOR ...Appellant.
V/S
LALIT JAIN AND ANR ...Respondents.

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Mr. L.S. Shukla, Advocate for the Appellant.
Mr. Jitendra M. Patil, Advocate for Respondent No.1.
Mrs. P.P. Bhosale, APP, for the State.

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CORAM : A. R. JOSHI, J.

DATE : 24th NOVEMBER, 2015

P.C.

1. Heard rival submissions on this appeal challenging acquittal of the respondent in the matter of offence under Section 138 of Negotiable Instruments Act.
2. Leave to file appeal was already granted vide order dated 9.3.2015. Even appeal was admitted vide order dated 23.3.2015. R & P was called without paper book and matter was then posted for final hearing on 20.4.2015.
3. A very small issue is involved in the matter as to non-appearance of the present appellant/orig.complainant on

8.4.2013 before the Metropolitan Magistrate, Court No.43, Borivali, Mumbai when the matter was called out for hearing. It was complaint No.2264/SS/2009 lodged by the present applicant against the respondent/then accused for taking action under Section 138 of Negotiable Instruments Act. The impugned order purported to be under Section 256 of Cr.P.C. was passed on 8.4.2013 mentioning that the complainant was absent. The complaint is old one and for many dates the complainant remained absent. As such, mentioning that the complainant is not interested in prosecuting the matter the complaint was dismissed and the accused/present respondent was acquitted.

4. Perused the rozanama copies annexed to the present appeal which are at page Nos.12 & 13. Apparently there is no history of long standing absenty of the complainant before the trial Court. In fact on few occasions the concerned M.M. Court was also on leave and the board was discharged. In the considered view of this Court, it would also be endeavour of the trial Court to dispose of the matters on merits instead of dismissing the complaint for want of prosecution and specially

when the cases are for the offence under Section 138 of Negotiable Instruments Act. Infact the law mandates that such cases are required to be disposed of within six months but in fact it is an unfortunate situation that the cases are lingering and cannot be taken up for various reasons. In any event, in the considered view of this Court the dispute between the parties is required to be decided on merits and in that event present appeal is allowed with directions to remand the matter back to the concerned trial Court to dispose of the complaint lodged by the applicant/complainant, in accordance with law. Hence, the order :

:: O R D E R ::

- [i] Criminal Appeal No.325 of 2015 is allowed.
- [ii] The impugned order of acquittal dated 8.4.2013 is quashed and set aside. Complaint No.2264/SS/2009 is restored to the file of learned Metropolitan Magistrate, Court No.43, Borivali, Mumbai with directions to said Court to dispose of the matter in accordance with law and after giving an opportunity to both the parties to represent their case.

[iii] Both the parties are directed to appear before the concerned trial Court on 18.1.2016 and then the matter shall proceed. The trial Court shall make all endeavour to dispose of the matter as expeditiously as possible. R & P be sent to the concerned trial Court.

(A. R. JOSHI, J.)

Deshmane (PS)