

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL WRIT PETITION NO.3794 OF 2014

Nilkamal Limited	.. Petitioner
Vs.	
The Union Territory of Dadar & Nagar Haveli, Silvassa & Anr.	.. Respondents

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Mr.Yashpal Thakur i/b. PKA Advocates, Advocate for the Petitioner.
Mr.D.A. Nalavade, Advocate for the Respondent No.1.
Mr.V.B.K. Deshmukh, A.P.P. for Respondent No.2 – State.

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CORAM : M. L. TAHALIYANI, J.

DATED : JANUARY 28, 2015.

P.C. :

The petitioners are the complainant in Summary Criminal Case No.172 of 2014. The complaint of the petitioners has been directed to be returned to them on the ground that the cheque in question was dishonoured not within the territorial jurisdiction of the learned Judicial Magistrate of Silvassa. The said order has been challenged before this Court. This Court has issued notice to the Union Territory of Dadar and Nagar Haveli, Silvassa. The learned Public Prosecution Mr.Nalavade for the Union Territory of Dadar and Nagar Haveli, Silvassa, is present.

2 The grievance of the petitioner's is that the learned Magistrate has returned the complaint despite the fact that the cheque was dishonoured at Silvassa by Silvassa Branch of State Bank of India though it was drawn on State Bank of India, Ghaziabad Branch. Since it was cheque at par, the same was dishonoured by the branch of State Bank of India situated at Silvassa. In view of judgment of this Court in case of ***Ramanbhai Mathurabhai Patel Vs. The State of Maharashtra & Anr.***¹, the complaint could have been tried by the learned Magistrate at Silvassa.

3 The learned Magistrate has refused to entertain the complaint and has ordered to return the same to the petitioner on the ground that in view of the Judgment of the Hon'ble Supreme Court of India in the matter of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra***², the learned Magistrate could not have heard the said complaint. The judgment of this Court in the matter of *Ramanbhai* (Supra) was brought to the notice of the learned Magistrate. The learned Magistrate, however, has said that in view of the stay granted by the Hon'ble Supreme Court of India, he was under an obligation to follow the Judgment of the Apex Court in the matter of *Dashrath Rathod* (Supra).

1 Criminal Writ Petition No.2362 of 2014

2 (2014) 9 SCC 129.

4 The learned counsel Mr.Thakur for the petitioner has invited my attention to the Judgment of the Apex Court in the matter of ***Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras***³. My attention was particularly invited to paragraph no.10 of the Judgment, which reads as under :

“10 In the instant case, the proceedings before the Board under Sections. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an

3 AIR 1992 SCC 1439

order and stay of operation of an order Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot

be said that any proceedings under the Act were pending before the Board or the Appellate Authority 1012 on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”

5 My attention was also invited to the Judgment of this Court in the matter of ***Geeta Marine Services Pvt.Ltd. & Anr. Vs. State and Anr.***⁴ The relevant portion of the judgment is at paragraph no.12. Paragraph No.12 of the Judgment reads as under:

“12 Therefore, so far as this Court is concerned, the view is settled. However, I am informed that now the Apex Court is seized of matters involving the said issues and therefore if any modification is made by the Apex Court in the view

taken by this Court naturally the learned Magistrates will have to abide by the law laid down by the Apex Court. It was tried to be submitted that the decision of this Court in the case of Peacock Industries Ltd. (Supra) which has taken the similar view based on the case of KSL Industries (supra) has been stayed by the Apex Court. However, the law on this aspect is very clear. In the case of Pramod K. Shah v. Commissioner of Custom Export Promotion and Anr. 2007 ALL MR (Cri) 1335 : 2007 (5) AIR Bom R 716 this Court has held that even if a decision of this Court is stayed by the Apex Court, unless the decision of this Court is set aside by the Apex Court, the Courts sub-ordinate to this Court are bound by the same. The said decision of this Court follows the decision of the Apex Court in the case of Shree Chamundi Mopeds Ltd.Vs. Church of South Indian Trust Association, Madras.” (Emphasis supplied)

6 In view of the two judgments cited above, the view taken by the learned Magistrate appears to be erroneous. In view of the Judgment of Supreme Court in the matter of *Shree Chamundi Mopeds Ltd. (Supra)*, the Judgments of this Court in case of *Geeta Marine Services Pvt. Ltd. (Supra)* and *Pramod K. Shah*⁵, it is abundantly clear that the Magistrate has to follow the judgment of this Court unless and until it is set aside by the Apex Court.

5 2007 All MR (Cri) 1335.

7 For all these reasons, the order passed by the learned Magistrate is set aside and it is directed that the Magistrate shall continue the hearing of the Summary Criminal Case No.172 of 2014, in accordance with the law.

8 The writ petition stands disposed of.

(JUDGE)