

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION (ALP) NO.518 OF 2015
WITH
CRIMINAL APPLICATION (ALP) NO.519 OF 2015**

Fashion Creator	..Applicant
V/s.	
The State of Maharashtra and Ors.	.. Respondents

Mr.Jatin P. Shah for the applicant.
Mr.A.R.Patil APP for the Respondent-State.
Mr.Murtaza Azmi a/w Mr.K.P.Dubey for Respondent
nos.2 and 3.

CORAM : A. R. JOSHI, J.

DATE : 14th DECEMBER, 2015.

P.C.

1. Heard rival arguments on these applications for leave to file appeal. The delay in both the matters is already condoned by this Court.

2. The present applications are for leave to file appeal challenging the acquittal of the respondent nos.2 and 3 who are the same respondents in both the matters. Both the said respondents-original accused were acquitted by dismissing the complaint lodged by the present applicant-complainant and

said dismissal order was passed for want of prosecution. The complainant who is same in both the matters had lodged initially three complaints against these respondents for taking action against them under section 138 of Negotiable Instruments Act. Out of the three complaints one complaint is still pending before the concerned M.M.Court where as two complaints were dismissed vide order dated 28th October 2014.

3. Apparently what held by the trial Court was the absences of the complainant for last three dates and this order was initially passed on 06th September 2014. The trial Court also observed that steps were not taken by the complainant to secure the presences of the accused i.e. present respondents nos.2 and 3. According to the trial Court ample opportunity was granted to the complainant. But in spite of this complainant and his advocate did not appear before the Court. By observing this on 06th September 2014 the matter was kept on 28th October 2014 for taking steps and passing orders for want of prosecution. The impugned orders came to be passed on 28th October 2014 specifically mentioning that the matter is

five years old and since last four dates complainant remain absent.

4. After hearing rival submissions and also after perusing the written submissions filed on behalf of the respondent nos.2 and 3 and also after going through the roznamma in both the matters the factual position is as under:-

On 21st May 2010 respondent-accused appeared before the trial Court in both the matters and represented by lawyer. He was granted bail in a sum of Rs.15,000/-. Cash bail was also allowed as prayed. Immediately part of the cash bail, Rs.5,000/- was deposited in each matter and time was given to deposit the remaining amount of Rs.10,000/- in each matter. Then the matter was adjourned to 30th August 2010. Then on various dates the accused remained absent and as such bailable warrant was issued in a sum of Rs.3,000/-. Apparently the warrant could not be served and as such the respondent-accused did not remain present before the Court. As the present position stand and also the same position was prevailing before the trial Court till the time of disposal of both

these complaints, that the present respondent-accused had not fully complied the bail order of the year 2010. Learned counsel for the respondent-accused on instructions stated that as per his knowledge the accused has only deposited Rs.5,000/- cash in each matter and apparently he is not aware whether the entire cash deposit was made before the trial Court. On this, learned counsel for the applicant stated that the said entire cash bail order was not complied till the disposal of the complaints by way of impugned orders.

5. In fact when an accused person is granted bail he is in the custody of the Court and he is allowed to be free under a bond executed in favour of the Court. It is infact the responsibility of the accused to appear before the Court on a given date when he is involved in a criminal matter and more so the matter under section 138 of Negotiable Instruments Act. The law mandates that the complaints under section 138 of N.I.Act are required to be disposed of within six months. However, matters are lingering for years together and one of the causes is that of the non-appearance of accused on the

given dates and also concerned Courts are on leave. In the present case also on various occasions the concerned Court was on leave and matter was transferred from one Court to another, thus aggravating the circumstances and causing delay in the trial. However, the fact remain that the present respondent-accused was on bail but the bail order was not fully complied and still he did not remain present before the trial Court. Under this premise the trial Court thought that it was the negligence on the part of the complainant to take proper steps and the trial Court dismissed both the complaints. In the considered view of this Court this is an erroneous approach in looking to the complaint under section 138 of N.I.Act and the endeavour should be made by the trial Court to disposed of the cases on merits or otherwise it will lead to multiplicity view of proceedings as has happened here. Moreover, it was also the responsibility of the concerned trial Court to secure the presences of the accused person when he was granted bail by the trial Court. In any event, in the considered view of this Court both these applications are required to be allowed and infact the appeals are required to be admitted and also allowed

by this order. Hence following order.

ORDER

(i) The applications for leave to file are allowed.

(ii) The respective appeals be numbered. The said respective appeals are hereby admitted and also allowed in view of the above reasoning.

(iii) The impugned order dated 28th October 2014 passed in both the matters is quashed and set aside and both the complaints originally filed by the applicants are restored to the file of the concerned magistrate to be dealt along with the third complaint bearing no.2391 of 2009.

(iv) Both the parties to appear before the concerned trial Court on 13th January 2016 when said connected third matter is kept before the concerned trial Court.

(v) Learned trial Magistrate shall deal with all the complaints in accordance with the law after giving appropriate opportunity to both the parties to address their case. Firstly trial Magistrate shall ascertain whether the bail order is already complied by the accused and if not appropriate steps shall be taken. Matter is accordingly disposed of. Directions are given

to the concerned trial Court to disposed of all the three cases by the end of April 2016.

(vi) Parties to act on authenticated copy of this order.

(A. R. JOSHI, J)