

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 1788 OF 2014
IN/WITH
CRIMINAL APPLICATION NO. 2636 OF 2012
IN/WITH
CRIMINAL APPLICATION NO. 2635 OF 2012**

Dr. Babasaheb Ambedkar Co-operative
Sugar Factory Limited, Keshegaon,
Tq. & Dist. Osmanabad

...Applicant

versus

The State of Maharashtra & anr.

...Respondents

.....

Mr. P. K. Ippar, Advocate holding for Mr S. J. Salunke, Advocate for
applicant

Mr. C. V. Dharurkar, A.P.P. for respondent No. 1

.....

CORAM : N.W. SAMBRE, J.

DATE : 21st JUNE, 2016

ORAL ORDER :

Criminal Application No. 2635 of 2012 is preferred by the applicant seeking special leave to appeal so as to question the legality and validity of the order dated 29/07/2010, passed below Exhibit-1 in S.C.C. No. 779 of 2004 by learned Judicial Magistrate, First Class, Osmanabad. Needless to say that, though those proceedings were arising out of the proceedings initiated for an offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint came to be dismissed by the Magistrate on the ground of default committed by present applicant in pursuing the proceedings. The said order of dismissal was the subject matter of

challenge in Criminal Misc. Application No. 62 of 2010 and the said application also came to be dismissed as respondent No.2 was not served.

2. Criminal Application No. 2635 of 2012 filed before this Court, since was time barred by period about 608 days, Criminal Application No. 2636 of 2012 for condonation of delay came to be filed. In both the matters, this Court though ordered notice, present applicant has failed to serve respondent No. 2 though repeated chances were given to him, which has prompted this Court to pass order on 07/11/2014, dismissing the said applications.

3. For restoration of Criminal Application No. 2636 of 2012 in Criminal Application No. 2635 of 2012, Criminal Application No. 1788 of 2014 came to be filed stating that the applicant shall serve respondent No. 2. In the said application also, this Court so as to show indulgence has caused notice at the behest of applicant to respondent No. 2 vide order dated 26/09/2014, however, till date, respondent No. 2 is not served. As a consequence, the Court dismissed the matter as against contesting respondent No. 2 on 07/11/2014.

4. In this background, learned Counsel for the applicant

submits that the applicant, co-operative sugar factory, be granted last opportunity to effect the service on respondent No.2 and the applicant is ready and willing to furnish correct address of respondent No. 2.

5. I am afraid, such opportunity cannot be granted to present applicant time and again, as this Court repeatedly has given opportunity to the present applicant to serve respondent No. 2 i.e. accused in the complain case under Section 138 of the Negotiable Instruments Act. The *Roznama*, as is reflected of the matter, when it was pending before the Magistrate and appeal before the learned Sessions Court and in these three applications before this Court reflects that, the matter is pending almost last more than four years and the applicant was unable to serve respondent No. 2, conditional orders were also not complied with. The alleged crime of default i.e. bouncing of the cheque is for the year 2003-2004 for an amount of Rs. 1,06,121/-.

6. In my opinion, no fruitful purpose will be serve by granting opportunity to the applicant. As such, all these applications fail, same stand rejected.

[N.W. SAMBRE, J.]