

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.6978 OF 2015
IN
CRIMINAL APPLICATION NO.6977 OF 2015

Kamalkishor Kisanlal Bhandari ..Applicant

Versus

Smt. Shamimbee Faruq Malaq
and anr. ..Respondents

--

Mr.S.P.Brahme, advocate for applicant

Mr.S.B.Sant, advocate for respondent no.1

Mr.N.T.Bhagat, APP for respondent no.2 - State

--

CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 25, 2016

PER COURT :

Heard.

2] For the reasons stated in the application, delay of 67 days caused in filing the application for leave to file appeal, is hereby condoned. The application is allowed and disposed of accordingly.

[M.T. JOSHI, J.]

kbp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.6977 OF 2015

Kamalkishor Kisanlal Bhandari ..Applicant

Versus

Smt. Shamimbee Faruq Malaq
and anr. ..Respondents

--

Mr.S.P.Brahme, advocate for applicant
Mr.S.B.Sant, advocate for respondent no.1
Mr.N.T.Bhagat, APP for respondent no.2 - State

--

CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 25, 2016

PER COURT :

Heard.

2] The complaint filed by the present applicant against present respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act was dismissed by the learned Judicial Magistrate F.C. and the respondent/accused was acquitted as present applicant/complainant remained absent in the said proceedings.

3] The facts of the case would show that earlier, the case was referred to Lok Adalat. Thereafter, both the parties remained absent in the Court for some dates. The applicant, thereafter, appeared and took steps for issuing non-bailable warrant against present respondent/accused. After about four months, the respondent/accused appeared in the proceedings and the non-bailable warrant issued against him was called back upon payment of costs of Rs.100/-. Thereafter, however, on three dates, both the parties remained absent and on the fourth date, the learned Judicial Magistrate F.C. has dismissed the complainant of the present applicant as both the parties were absent.

4] Learned counsel for the applicant submits that in fact, the Advocate for the applicant in the trial Court, did not communicate the respective dates to the applicant and therefore, no further

action could be taken in the said proceedings. He therefore, submitted that present application may be allowed and leave to file the appeal may be granted. He also submitted, on instructions, that the applicant is ready to deposit an amount of Rs.5,000/- towards costs in the District Legal Services Authority at Dhule.

5] Taking into consideration all the facts on record, in my view, leave to file appeal deserves to be granted.

6] Present application is, therefore, allowed. Leave to file appeal is hereby granted.

7] The appeal be registered as per the due procedure of law.

8] The appeal is **admitted**.

9] By consent of the parties, the appeal is taken up for final hearing.

10] For the reasons already forwarded herein above, the impugned order passed by the learned Judicial Magistrate F.C. is hereby set aside.

11] The complaint filed by the present applicant/appellant for the offence punishable under Section 138 of the Negotiable Instruments Act, is restored to the file of the learned Judicial Magistrate F.C. The learned Judicial Magistrate F.C. to proceed with the complaint according to the due procedure of law.

12] The parties are directed to appear before the learned Judicial Magistrate F.C. on 20th April, 2016. Present appeal is allowed and disposed of accordingly.

13] Parties to act on authenticated copy of this order.

[M.T. JOSHI, J.]

kbp