

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1283 OF 2015
ALONGWITH
CRIMINAL APPLICATION NO.27 OF 2016
ALONGWITH
CRIMINAL APPLICATION NO.1284 OF 2015
ALONGWITH
CRIMINAL APPLICATION NO.28 OF 2016
ALONGWITH
CRIMINAL APPLICATION NO.1285 OF 2015
ALONGWITH
CRIMINAL APPLICATION NO.29 OF 2016

Wing Commander A.S. Oberai (Retd.) ... Applicant
Vs.
Tata Communications Ltd. & Anr. ... Respondents

Mr. Subhash Jha, Adv. a/w. Ms. Rushita Jain, Adv. i/b. Law Global
Advocates for the applicant.
Mrs. G.P. Mulekar, APP for the State.
Mr. Raja Thakare, Adv. a/w. Mr. R.V. Pradhan, Adv. a/w. Ms. Supriya
Devargudi, Adv. for respondent No.1.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 10th February, 2016.

P.C. :

1. By these applications the applicant herein has challenged the order dated 22nd July, 2014 in C.C. Nos.1424/SS/09, 836/SS/09 & 1413/SS/09 under Sections 138 and 142 of Negotiable Instruments Act, 1881 pending before the 23rd Court at Esplanade, Mumbai. The respondent No.1 herein had filed complaint against aforesaid applicant for offence under Section 138 of N.I. Act. The records

reveal that the applicant had failed to remain present and that the cross examination of PW1 was closed. Subsequently the application dated 21st February, 2013 was filed which was rejected by impugned order dated 22nd July, 2014.

2. The applicant is facing trial for offence under Section 138 of N.I. Act. Hence without going into the merits of the case, in my considered view in the interest of justice, the applicant should be given full opportunity to establish his innocence or defence, if any. Since the applicant has delayed the trial by not remaining present before the learned Magistrate, it would be just and proper to saddle the applicant by imposing exemplary costs. Under the circumstances, the applications are allowed. The impugned orders dated 22nd July, 2014 are quashed and set aside subject to payment of costs of Rs.20,000/- in each of the three applications.

The criminal complaints are of the year 2009, hence the learned Metropolitan Magistrate is directed to dispose of the case as expeditiously as possible, in any event within a period of two months from the date of this order.

The applicant is at liberty to file application for cancellation of warrant before the learned Metropolitan Magistrate and the

Metropolitan Magistrate shall consider the same on its own merits.

Till such time the execution of warrant is stayed.

3. Both the parties are directed to appear before the Metropolitan Magistrate on 17th February, 2016 at 10 am.

(ANUJA PRABHUDESSAI, J.)