

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.432 OF 2016

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Girish Kulkarni with Aditya Mithe i/by M.S.Prasad for the Applicants.

Mrs. Poonam Bhosale, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 22nd April,2016.

P.C.

This is an application filed under Section 482 of the Code of Criminal Procedure praying that the order dated 12.4.2016 passed below Exh.111/D in Criminal Appeal No.70/2009 by the learned Additional Sessions Judge, Alibaug be set aside and the Appellate Court may be directed to decide the appeal on merits in the absence of the applicants.

2) The applicants are the original accused Nos. 2,3 and 4 in Summary Case No.682 of 2007 filed by the respondent No.1 under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate First Class, Khalapur by its Judgment and Order dated 29.10.2009 was pleased to convict the applicants under Section 138 of the Negotiable Instruments Act and sentenced to suffer simple imprisonment for 7 days. The amount involved in the present case is Rs.43,552/- and during the pendency of the said case before the Trial Court the applicants have already deposited the said amount

in the registry of the Trial Court. Feeling aggrieved by the said Judgment and order dated 29.10.2009 the applicants herein preferred Criminal Appeal No.70/2009 in the Court of Sessions at Alibag. The hearing of the appeal is concluded and the said appeal is now posted for pronouncement of Judgment and Order. The said appeal was initially posted for passing Judgment and Order on 12.4.2016. As the appellants were held up in their prior business commitment they were unable to attend the Appellate Court and therefore they filed an application for exemption through their Advocate. The said application is at Exh.111-D on the record of the Appellate Court. The learned Additional Sessions Judge by its order dated 12.4.2016 rejected the said application and issued non bailable warrant against the applicants making it returnable on 19.4.2016. The record discloses that the said returnable date has been further extended.

3) The learned counsel appearing for the applicants submitted that the presence of the applicants at the time of pronouncement of the Judgment and Order of the Appeal is not necessary in a case pertaining to Section 138 of the Negotiable Instruments Act. He further submitted that the learned Appellate Court ought not to have rejected the application preferred by the applicants which is at Exh.111-D and ought to have considered it sympathetically. In support of his contention, he relied upon the Order passed by the learned Single Judge of this Court in Criminal Writ Petition No.1455/2008 dated 25.7.2008. The Order passed in W. P. No.1455/2008 is an order of reference to larger Bench. The learned Single Judge after perusing the various provisions of Code of

Criminal Procedure has taken a view that it is not necessary to stay the of the proceedings of Appeal, however, the personal presence of the applicants at the time of pronouncement of the Judgment can be dispensed with.

In view of the view taken by this Court in W. P No.1455/2009, I am inclined to allow the present application. The impugned order dated 12.4.2016 passed by the learned Additional Sessions Judge, Alibag is hereby set aside. The Appellate Court to proceed with the hearing and final disposal of the said appeal. The personal presence of the applicants at the time of pronouncement of the judgment in Criminal Appeal No.70/2009 is dispensed with.

- 4) Application is allowed in the aforesaid terms.
- 5) All the concerned to act on a copy of this order duly authenticated by the registry of this Court.

(A.S. GADKARI, J.)