

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 258 OF 2016
(For Leave to file Appeal)**

Shrikrishna Narayan Soman

...Applicant

Versus

Himanshu Sheshrao Namle & Anr.

...Respondents

Mr. Chetan Akerkar for the Applicant

Ms. Dipti Shah a/w Mr. Manish Bohra I/b A. S. Khan & Associates for the Respondent No. 1

Ms. P. P. Shinde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 3rd AUGUST, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned Counsel for the respondent.
2. Leave granted. Admit. Respondents waive service through their respective Counsel. Leave application to be treated as appeal memo and be numbered accordingly.
3. With the consent of the parties, the appeal is taken up for final hearing forthwith.

4. Learned Counsel for the applicant submits that a complaint was filed by the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act on 8th June, 2007. On 5th July, 2007, the learned Judicial Magistrate First Class was pleased to issue process as against the respondent No. 1 accused. He submits that as the respondent was absconding, notice could not be served on him and hence after the applicant secured the address of the respondent-accused, the learned Judicial Magistrate, First Class was pleased to issue a non-bailable warrant on 28th August, 2014. He submits that when the matter came up before the learned Judicial Magistrate First Class on 28th April, 2014, without awaiting the report of the Non-bailable Warrant, the complaint came to be dismissed and the applicant came to be acquitted under Section 256 of the Cr. P. C. He submitted that in fact, the applicant/original complainant was present in Court, however, he did not hear the case number when it was called out. He submitted in the facts, it cannot be said that the applicant/original complainant was not diligent. In the facts, it is submitted that the appeal be allowed and the impugned judgment and order dated 28th April, 2014 passed by the learned Judicial Magistrate First Class, 44th Court, Andheri, Mumbai in CC No. 2061/SS/2007 be quashed and set-aside and the matter be remitted back to the trial Court for fresh adjudication.

5. Learned Counsel for the respondent No. 1 states that the respondent-accused would submit to the order passed by this Court.

6. Perused the papers, in particular, the Roznama of the trial Court. It appears that the complaint was filed on 8th June, 2007; the process was issued on 5th July, 2007; that notice could not be served on the respondent and finally the trial Court issued a Non-bailable Warrant as against the respondent-accused on 28th February, 2014. It appears that on 28th April, 2014, the report of the NBW was not received and hence, the learned Judicial Magistrate First Class proceeded to dismiss the complaint on the ground that the complainant is absent and as the complaint was more than 7 years old and in view of the Circular of the High Court dismissed the said complaint under Section 256 and acquitted the respondent/accused. Reliance placed on the Circular by the learned Judicial Magistrate First Class appears to be misconceived. Even otherwise, no fault can be found with the applicant/complainant who was pursuing the complaint since 2007. As the respondent/accused had changed his address and moved to Rajasthan, the Magistrate was pleased to issue Non-bailable warrant on 28th February, 2014. It appears that without waiting for the report of the Non-bailable warrant, the complaint was dismissed.

7. Considering the peculiar facts of this case, the appeal is allowed and the impugned judgment and order dated 28th February, 2014 passed by the learned JMFC in CC/2061/SS/2007, is quashed and set-aside and CC/2061/SS/2007, is restored back to its original file. Both the parties shall appear before the learned Judicial Magistrate First Class on 7th September, 2016. Learned Counsel for the respondent states that even the respondent No. 1 will remain present on the said date before the learned Judicial Magistrate First Class after which, the learned Judicial Magistrate First Class shall fix a date and proceed with the said case.

8. Considering that the case is of 2007, the learned Judicial Magistrate First Class to dispose of the said case as expeditiously as possible and preferably within six months from the date of receipt of this order.

9. Appeal is disposed of as aforesaid.

10. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.