

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1155 OF 2016

Rangara Industries Pvt. Ltd. & Ors. Applicants

versus

State of Maharashtra & Anr. ... Respondents

Mr.Chetan S. Damre, Advocate for the Applicant.

Mr.S.R. Agarkar, APP for the State/Respondent.

Mr.Jatin P. Shah, Advocate a/w Ms. Snehankita Munj, Advocate
for Respondent No.2.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 15th DECEMBER, 2016.

P.C. :

1. This criminal application is taken before the court on production yesterday in which the order dated 02/09/2016 passed by the learned Additional Sessions Judge, Greater Bombay at Ex.15 in Criminal Appeal No.1147/2014 is challenged. This order was passed on the application moved by the applicants i.e. the original applicants who are the original accused in criminal case facing charges u/s 138 N.I. Act. The applicants are convicted by the learned Magistrate. So they filed Criminal Appeal No.1147/14 which is pending before the learned Additional Sessions Judge,

Greater Bombay. During the pendency of the appeal application u/s 391 of Cr.P.C. seeking permission to lead further evidence in appeal was made by the present applicants. As per the case of the original complainants have sold the goods to the present applicants i.e. the accused against which cheque payment was made and those two cheques total amount of Rs.3,39,05,355/- were dishonoured. Hence the private complaint was filed before the learned Magistrate and it was concluded in conviction of applicants. In the application made u/s 391 of Cr.P.C. the applicants have mentioned the name of one Mr.Rupesh Gupta the Director of M/s. Geeta Mercantile Pvt. Ltd. with the contention that the complainants have purchased the goods which were supplied to the applicants. Now by way of further evidence the applicants want to bring on record that Mr.Rupesh Gupta in fact had not supplied the goods at the relevant time to the original complainant.

2. The said application was made on 26/08/2016 and was heard on 02/09/2016 by the learned Sessions Judge who held that it is not necessary to take additional evidence on record and passed a reasoned order. Hence this application.

3. At the time of production it was urged by the learned counsel for the applicant that interim stay may be granted to the proceeding before the Sessions Court as the learned Sessions Court is going to deliver the judgment on 16/12/2016. It was further submitted that no opportunity was given to argue the matter before the learned Sessions Judge. In view of these submissions the report from the learned Special Judge of CBI and Sessions Judge in respect of Roznama was urgently called. The learned Sessions Judge has taken pains, put in his valuable time and made a report to this Court. The said report is taken on record as Ex.1.

4. Today the learned counsel for the applicants has submitted that the application for taking further evidence u/s 391 of Cr.P.C. should have been allowed by the learned Sessions Judge. He submitted that the name of Mr.Rupesh Gupta was revealed by the applicants at later stage and therefore his evidence could not be tendered at the time of the trial. He further submitted that the advocate Mr.Kapil Dave has filed Vakalatnama before the learned Sessions Court and has withdrawn his Vakalatnama on 09/12/2016 and it is submitted that as on today the applicants are not represented by the counsel.

5. The learned counsel for the respondent, original complainant has opposed the submissions made by the learned counsel for the applicants. He submitted that the applicants were given ample opportunity to argue the matter. However continuously the advocate did not appear before the learned Sessions Judge.

6. On perusal of the order passed by the learned Sessions Judge on the application made u/s 391 of Cr.P.C. it is found that the name of Mr.Rupesh Gupta was available to the applicant when invoices were produced by way of evidence before the trial Court. The trial was concluded in the year 2014 and thus since 2014 at the time of filing of the appeal, application should have been made. I do not find any reason to interfere in this order passed by the learned Sessions Judge.

7. Apart from the merit of the case I express my displeasure towards the conduct of the applicants, the manner in which the proceeding before the appellate court are protracted on

various dates can hardly be approved. The learned sessions judge has given detail chronology of the appeal how it proceeded. It reveals that the appeal was fixed for hearing on 09/06/2016 then to 01/07/2016. At that time one advocate Mr.Musale appeared. Then he sought adjournment. The matter was fixed on 29/07/2016. Again adjournment was sought by Mr.Musale. Matter was fixed on 22/08/2016. It was found that Mr.Musale has not filed Vakalatnama despite of undertaking given on 01/07/2016 and 09/06/2016. The matter was argued on 26/08/2016 by the counsel of the original complainant and on that day one advocate Mr.Nerurkar appeared and filed application u/s 391 of Cr.P.C. At the time of hearing of this application name of Advocate Mr.Kapil Dave is shown. This matter was adjourned for argument at the instance of applicants on 27/09/25016. Then 26/10/2016, 29/11/2016 and 09/12/2016 and on that day one advocate Mr.Vyas appeared and filed application for adjournment. So the matter is adjourned by the learned Sessions Judge on 16/12/2016 for judgment.

8. Considering all these circumstances and the facts placed before the Court the application is dismissed as no merit is

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found. The applicants and the counsel are directed to go before the Sessions Court today itself and mention orally that the opportunity be given to the counsel of the applicant to make the submissions tomorrow. The learned Sessions Judge may proceed as per his convenience. However, one opportunity is given to the applicant to argue the matter before the learned Judge tomorrow at sharp 11.00 a.m. If the arguments are not advanced or the parties or the lawyers do not remain present before the Court, the learned Judge may go ahead with the judgment without hearing arguments of the applicants.

9. The applicant to bear costs of Rs.10,000/- for their conduct and protracting the matter before the Sessions Court. It is to be paid to the respondents.

10. The liberty is granted to file Vakalatnama.

11. As per his convenience, the learned Judge may fix the date for the judgment, may be 16/12/2016 or afterwards.

(MRIDULA BHATKAR, J.)