

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.466 OF 2015

IN

WRIT PETITION NO.589 OF 2015

Mr. Sujeet Joshi
Versus

...Applicant

The State of Maharashtra & Anr.

...Respondents

...

Mr. Amar Talreja for the Applicant.

Mr. Ajit Savagave for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 7th OCTOBER, 2016

P. C. :

This is an application filed by the aforesaid Applicant for reviewing/ modifying or recalling the order dated 27th August, 2015 passed in Criminal Writ Petition No.589 of 2015.

2. Heard the learned counsel for the Applicant and the learned counsel for the Respondent/complainant.

3. The learned counsel for the Applicant has submitted that he had appeared before the Bench presided over by Justice S.S. Jadhav on 20.8.2015. Since the case was wrongly placed before the Hon'ble

Judge on that day, it was taken off the board. The learned counsel for the Applicant submits that hearing of the case was thereafter scheduled on 21.9.2015. He claims that the matter was wrongly taken up on 27.8.2015 and that it was disposed of without hearing him. He further submits that even otherwise the Petitioner in writ petition No.589 of 2015 had alternative remedy of challenging the order before the Sessions Court and that instead of approaching the Sessions Court, the Petitioner directly came in writ jurisdiction. The learned counsel for the Applicant further submitted that even otherwise on the merit of the matter order dated 27th August, 2015 cannot be sustained.

4. The learned counsel for the Respondent/complainant has submitted that the matter was wrongly placed on board of 20th August, 2015 and counsel for the Applicant had not filed his vakalatnama even on 20.8.2015. He has submitted that the matter was rightly listed on 27th August, 2015 and despite due service the Applicant had failed to remain present. He therefore, submits that order dated 27th August, 2015 cannot be reviewed on the ground that the Applicant was not heard. The learned counsel for the Respondent/complainant has further submitted that the fact that alternative remedy is available is not a ground for recall of the order. He further submits that the

Applicant cannot challenge the merits of the order.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned counsel for the Respondent No.2/complainant.

6. The Respondent No.2 was the complainant in CC/1616/2012 filed before the 5th Jt. Judicial Magistrate, First Class, Satara, in a complaint filed against the Applicant herein for the offence punishable under section 138 of the Negotiable Instruments Act. Relying upon the judgment of the Apex Court in ***Dashrath Rupsingh Rathod Vs. State of Maharashtra (2014) 9 SCC 129***, the Applicant /accused had filed an application dated 7th October, 2014 for return of complaint for presenting the same before the appropriate Court. By order dated 11th October, 2014, the learned Magistrate had allowed the said application and had returned the complaint to be presented before the appropriate Court. Aggrieved by the said order the Respondent -complainant had filed writ petition No.589 of 2015.

7. Notice dated 4th August, 2015 of the said petition, which was made returnable on 20.8.2015 was duly served on Respondent

No.2. The records reveal that on 20.8.2015 matter was listed before Justice S.S. Jadhav. The farad sheet does not indicate that the Applicant had put in his appearance or that his counsel had filed vakalatnama on behalf of the Applicant. The matter was listed on board on 27th August, 2015. On which date neither the Applicant nor his counsel remained present before the Court. Hence, the matter was heard and was disposed of by order dated 27th August, 2015.

8. The records thus, reveal that Respondent No.2 was duly served and despite due service he had failed to remain present before the Court on 27th August, 2015. Consequently, the Applicant cannot seek recall of the order on the ground that he was not heard in the matter. Needless to state that order of the Trial Court was set aside in view of the amended provisions of section 141 of the Negotiable Instruments Act and by virtue of ordinance dated 15th June, 2015. The order cannot now be recalled on the ground of alternative efficacious remedy.

9. The application has no merits and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)