

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPA) No.11 of 2015
in
Criminal Appeal No. of 2015

Bharat s/o Mohandas Bhojwani
..VS..
Bharat Bacchumal Amesar and 1 other.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.F. Bhagwani, advocate for applicant.
Mr. M.J. Khan, APP for respondent no.2

CORAM : N.W. SAMBRE, J.
DATED : 18th JULY, 2016.

The Criminal Complaint Case No. 2974/2012 which was initiated for an offence punishable under section 138 of Negotiable Instruments Act came to be dismissed for absence of the complainant and his lawyer, ordering acquittal of the respondent no.1 vide order dated 21/07/2014 is questioned in the present proceedings.

The respondent no.1 though served none appears.

It is brought to my notice by the learned counsel for the appellant that the evidence of the complainant was recorded and thereafter just because the complainant and his lawyer remained absent, the acquittal came to be ordered. The learned counsel for the appellant submits that once the evidence of the complainant is over, it is established that the accused is involved in the crime in question. He further submits that it was expected of the learned Magistrate to proceed with the recording of the statement of the accused under section 313 of the Code of Criminal Procedure.

According to him, no prejudice would be caused to the respondent accused if the complaint is restored as the respondent-accused will get fair opportunity to defend his case.

As the above referred submissions are not controverted as the respondent-accused remained absent, in my opinion, the submissions are required to be considered in the light of the procedure as prescribed under the Code of Criminal Procedure in summary trial to be conducted. It is to be noted that once the evidence of the complainant was recorded including that of his cross-examination, material was available against the accused on record. This position is not disputed. Apart from above it is not the case that the complainant is consistently remaining absent.

For the aforesaid reasons, in my opinion, the present appeal needs to be allowed. Order dated 21.7.2014 is hereby quashed and set aside. The Criminal Complaint Case No. 2974/2012 as such stands restored to the file of Judicial Magistrate, First Class, Court No. 3 Nagpur.

The Criminal Application stands disposed of in above terms.

JUDGE

Hirekhan

CERTIFICATE

I certify that this Judgment uploaded is a true and correct copy of original signed Order.

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P.A.

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