

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CRIMINAL APPLICATION (APPR) NO.212 OF 2016

IN

CRIMINAL REVISION APPLICATION NO.65 OF 2014(D)

(Shri Purushottam s/o Gopikisan Sarda ..vs.. State of Maharashtra, through PSO, PS Tahsil, Nagpur)

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

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for the applicant,
Shri C.A. Lokhande, Addl.P.P. for the non-applicant No.1.

CORAM : P.N. DESHMUKH, J.

DATED : 01-12-2016

None for the non-applicant Nos.2 and 3 though served.

Heard learned Counsel Shri S.V. Sirpurkar for the applicant. This application is filed for speaking to minutes for clarification of order of this Court dated 10-07-2015 (Coram : A.B. Chaudhari, J.) passed in Criminal Revision Application No.65/2014 with regards to restoration of order passed by the learned Judicial Magistrate First Class dated 19-09-2013 in S.C.C. No.10925/2013 whereby the learned trial Court had ordered to issue process.

The learned Counsel for the applicant has contended that out of Criminal Complaint Nos.10925/2013 and 9115/2013 wherein trial Court has directed to issue process, two revision being Criminal

Revision Application Nos.39/2014 and 40/2014 were preferred and against orders passed in these revisions, matter was filed before this Court by way of Criminal Revision Application No.65/2014 wherein it was prayed in paragraph No.1 as reproduced below :

(1) call for the record and proceedings in Criminal Revision Application Nos.39/2014 and 40/2014, decided by the Additional Sessions Judge, Nagpur and also Criminal Complaint Case No.10925/2013 and on 9115/2013 which were filed before the Court on 31st Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Nagpur and after perusal of the same quash and set aside the impugned common judgment dated 4th April, 2014 in both revisions and further direct the 38th Judicial Magistrate First Class to decide the Criminal Case in accordance with law.”

It is, therefore, contended that this Court though had upheld order of issuance of process issued in S.C.C. No.10925/2013 in paragraph No. (C) of the operative part of the order, number of S.C.C. No.9115/2013 is not stated and therefore, the learned trial Court has not restored S.C.C. No.9115/2013 on its file.

It is noted that in paragraph No.2 of the order of this Court, it was considered whether the order of issuance of process in a complaint under Section 138 of the Negotiable Instruments Act could be set aside only on the ground that notice under Section 138 of the said Act was not addressed to nor any demand was made

from the Company, but was made from the Director of the Company and having considered said issue, order of issuance of process was upheld. In the result, it is noted that vide order dated 10-07-2015 both the cases filed on the file of learned Judicial Magistrate First Class need to be restored. In the circumstances, following order is passed.

Application is allowed. Order passed by learned Judicial Magistrate First Class in S.C.C. No.9115/2013, issuing process since is upheld, said case stands restored on the file of concerned Court.

JUDGE