

Sequeira

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

CRIMINAL APPEAL NO. 14 OF 2002

Shri Mukhtar Somani Shaikh.

.. Appellant

Vs

State of Maharashtra & Anr.

.. Respondents

None for the Appellant.

Mr.P.H.Gaikwad –Patil APP, for the Respondent-State.

Coram : N.M.Jamdar, J.

Date : 11 August 2017.

P.C. :

None for the Appellant.

2. From the perusal of the papers which have been annexed to the appeal memo, it appears that the Appellant had filed a Complaint Case No.1067/S/97 against Respondent No.2 under section 138 of the Negotiable Instrument Act, 1881 read with section 420 of the Indian Penal Code before the Metropolitan Magistrate, Borivali Mumbai. On 20 July 2001, the case was dismissed by the learned Metropolitan Magistrate, Mumbai since the Appellant did not remain present. Criminal Revision Application No.647 of 2001 was filed by the Appellant, which was dismissed by the Sessions Court, on 28 September 2001.

3. Therefore, it appears that the grievance of the Appellant is regarding dismissal of his complaint for non-prosecution. The complaint is filed under section 138 of the Negotiable Instrument Act and section 420 of the Indian Penal Code in respect of the cheque stated to have been given by the Respondent No.2 on 4 October 1996.

4. In this Appeal also the Appellant has not appeared on various occasions. On 16 June 2017, none appeared and the Appeal was adjourned. On 28 June 2017, order was passed as under -

'1] None appears for the appellant. The appeal is against the dismissal of complaint on the ground of absence of appellant –complainant and resultant acquittal of the respondent. None appeared on earlier dates as well. To give one more opportunity to the appellant, hearing of the appeal is deferred by a period of three weeks. If none appears on the next date the court may proceed to pass an order as per law in the absence of the appellant.'

The Appeal was notified on board on 10 August 2017 and again today. None appears on behalf of the Appellant.

5. The Appellant appears to be completely negligent in prosecuting his complaint. The least he could have done, if he wanted his complaint to be restored, was to prosecute the Appeal diligently. Considering the conduct of the Appellant, which has

continued even in this Court, no error can be found with the order of the learned Magistrate dismissing the complaint for non-prosecution. The Appeal is accordingly dismissed.

(N.M.Jamdar, J.)