

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

CRIMINAL REVISION APPLICATION NO. 583 OF 2002

M/S Wipro Ltd.	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms.Sanjana Pardeshi i/b M/s Law Global for the applicant.
Ms.P.P.Shinde, APP for the State.

**CORAM: A.M. BADAR, J.
DATED: 6th DECEMBER 2017**

PC:-

1. The petitioner/original complainant by this revision petition is challenging the order dated 28.11.2002 passed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai in Case No.126/Misc./2002, thereby dismissing the complaint filed by the revision petitioner for the offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 for want of prosecution.

2. Heard the learned advocate appearing for the revision petitioners. She drew my attention to the order sheet maintained by the learned trial Magistrate as well as to the

Record and Proceedings of the Criminal Case bearing No.126/Misc./2002 and argued that there was no written order directing the complainant to make compliance. The learned advocate further argued that the order sheet reflects that the complainant as well as his advocate were present before the learned Trial Magistrate from time to time and as such the learned Trial Magistrate was not justified in dismissing the complaint by observing that the complainant and his advocate are absent since long.

3. None appeared for the respondent Nos.2 and 3 despite service. The learned APP appears for the State.

4. I have carefully considered the submissions so made and also perused the Record and Proceedings. The complaint for commission of the offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act came to be lodged by the present revision petitioner with an accusation that though the respondent therein had issued a cheque in the sum

of Rs. 85,801.05/- in favour of the complainant for discharge of legally enforceable debt, the cheque returned unpaid for want of sufficient funds. There are averments regarding issuance of statutory notice in the said complaint. The record shows that Sunil Bhandari appeared as authorised representative of the complainant Company and his verification statement came to be recorded by the learned Trial Magistrate on 4.3.2002. The record of the Trial Court does not indicate what compliance was expected from the revision petitioner/original complainant. On the contrary, it is seen that on the back side of verification statement there is typed unsigned order to the effect that the learned Trial Magistrate found sufficient ground for proceedings against the accused and therefore, summons be issued against the accused for commission of offence punishable under Section 138 of the Negotiable Instruments Act on payment of the process fees.

5. Record and Proceedings further shows that under the guise of making compliance by the revision petitioner/original

complainant, the complaint was adjourned to 13.3.2002, 3.4.2002, 10.4.2002, 4.7.2002, 22.8.2002, 9.9.2002 and 7.10.2002. Ultimately, on 28.11.2002 noting the fact that the complainant and his advocate are absent when called, the complaint was dismissed for want of prosecution. Separate order was also passed on the criminal complaint by recording a reason that the complainant and his advocate are absent since long.

6. Perusal of the order sheet maintained by the learned Trial Magistrate do shows that the complainant and his advocate were absent only on two occasions i.e. on 10.4.2002 and on 7.10.2002 and on rest of the dates, either the complainant or his advocates were present before the Court. The record does not indicates what compliance was expected from the complainant particularly when the verification statement of the authorised representative of the complainant was already recorded. However, abruptly, on 28.11.2002 by making a note in the order was to the effect that the

complainant and his advocate are absent when called, the complaint was dismissed. The separate order passed by the learned Metropolitan Magistrate which is impugned in the instant revision petition adds one more reason for dismissing the complaint for want of prosecution. It is mentioned therein that the "complainant and his advocate are absent long back."

7. Thus, the complaint is seems to be dismissed with total non application of mind to the facts of the case. The verification statement was recorded and almost on all occasions, either the complainant or his advocate were present before the learned Trial Magistrate. As such the Trial Magistrate ought not to have proceeded to mechanical dismissal of complaint lodged by the revision petitioner with a reason that the complainant and his advocate are absent since long. Impugned order as such is suffering from non application of mind as well as perversity and therefore, needs to be quashed and set aside. Therefore, the following order:-

ORDER

- i) The Revision Petition is allowed.

- ii) The impugned order dated 28.11.2002 dismissing the complaint for want of prosecution is quashed and set aside.

- iii) The complaint filed by the revision petitioner is restored to the file of the learned Metropolitan Magistrate.

(A.M. BADAR, J)