

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.63 OF 2017
(For Leave to Appeal – By Private)
WITH
CRIMINAL APPEAL NO.406 OF 2017**

Shagun Trading Company ... **Applicant/Appellant**
V/s.
The State of Maharashtra & Ors. ... **Respondents**

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Mr.Dilip H. Shukla, Advocate for the Applicant/Appellant.
Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 24th APRIL 2017.

ORAL JUDGMENT :

1 Heard the learned Advocate appearing for the applicant as well as the learned Additional Public Prosecutor appearing for respondent No.1.

2 Leave granted.

3 Admit.

4 Memo of application is considered as Memo of Appeal and the same is heard forthwith, as it is not necessary to issue

notice to respondent Nos.2 to 4 who were not served before the trial Court when the complaint came to be dismissed by the impugned order by the learned Trial Magistrate.

5 By this appeal, the appellant is challenging the order dated 14/10/2016 passed by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai below Exhibit 1 in Criminal Case No.454/SS/2016 filed by the present appellant against respondent Nos.2 to 4 alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. According to the appellant/original complainant, respondent Nos.3 and 4 had placed order for 2000 ACC cement bags costing Rs.6,80,000/- and for discharging of legally enforceable liability for supply of the ordered material, a cheque for Rs.6,80,000/- came to be issued in favour of the appellant/original complainant, which ultimately came to be dishonoured. Hence, after issuing and serving statutory notice, the complaint came to be filed against respondent Nos.2 to 4 alleging commission of offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai on 25/01/2016. It was then kept for verification on 18/04/2016. On that day the learned Metropolitan Magistrate was on leave and, therefore, the complaint came to be adjourned to 27/06/2016. On this adjourned date, as seen from *roznama* placed on record, the board came to be discharged and

the complaint was adjourned to 16/08/2016. On that day, as seen from the *roznama*, verification statement of the complainant came to be recorded and process was ordered to be issued against respondent Nos.2 to 4/original accused. The complaint was then adjourned on 14/10/2016. On that day i.e. on 14/10/2016, the impugned order below Exhibit 1 came to be passed dismissing the complaint. It is seen from this impugned order that the learned trial Magistrate has observed that after issuance of summons no attempts were made by the complainant to take out summons and to get it served on accused persons. It is observed by the learned trial Court that the learned Advocate for the complainant, so also the complainant are absent and because of such act of the complainant, the complaint is lingering unnecessarily. With such observations, by the impugned order below Exh.1 passed on 14/10/2016, the learned Trial Magistrate dismissed the complaint for want of prosecution.

6 The primary function of the Court is to adjudicate the dispute between the parties finally. In the case in hand, as seen from the order sheet, the complaint after recording verification and issuing process on 16/08/2016 came to be adjourned to 14/10/2016. It is mentioned in the order sheet that it is adjourned at 11.00 a.m. on 14/10/2016. After issuance of process against accused persons on 16/08/2016, 14/10/2016 was the very first date and as such it was not proper on the part of the learned Metropolitan Magistrate to conclude that the complaint is

lingering unnecessarily. Rather than disposing the complaint, the learned trial Magistrate ought to have waited for getting the necessary compliance done on that day instead of dismissing the complaint in the morning hours. The learned Advocate for the appellant has categorically stated that the appellant/original complainant was informed to reach the Court in the afternoon on that day. If the learned trial Magistrate would have waited for few hours rather than dismissing the complaint on the very first day, there would have been finality to the litigation by trial of the offence alleged and disposal of the matter on merits. In this view of the matter, the impugned order below Exhibit 1 dismissing the complaint on the very first day of hearing cannot be sustained and, therefore, the order :

- (i) The appeal is allowed.
- (ii) The impugned order below Exhibit 1 passed in Criminal Case No.454/SS/2016 on 14/10/2016 by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai is quashed and set aside. The complaint is restored to the file for disposal according to the law.
- (iv) The complainant and the learned counsel for the complainant to appear before the trial Magistrate on 5th May 2017.
- (v) The Appeal stands disposed of accordingly.

(A.M.BADAR J.)