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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.743 OF 2015

Mr. Mohammed Shahid Jamal

... Applicant

vs.

The State of Maharashtra & Ors.

... Respondents

Mr. Rakesh Kumar Singh for the Applicant.

Mr. Ganesh Manohar Mohite for Respondent no.3.

Mr. V. B. Konde-Deshmukh, APP, for the Respondent-State

CORAM : A.K. MENON, J.

DATED : 3rd JULY, 2017

P.C.

1. By this application, the applicant has called into question the order dated 18th June, 2015 dismissing complaint bearing no.107/SW/2008 and praying for restoration of said complaint of the Metropolitan Magistrate, 51th Court, Kurla, Mumbai. The complaint came to be filed on 22nd June, 2007 by the present applicant under Sections 415, 420 read with Section 34 of the Indian Penal Code. It came to be numbered as 107/SW/2008. The impugned order is dated 18th June, 2015. Initially a direction was sought under Section 156(3) of Cr.P.C. However, the Court had declined this prayer and directed the complainant to adduce evidence before issuing the process and dismissed the complaint against accused no.1. Thereafter the process was issued against accused nos.2 and 3 in respect of the complaint arises on account of alleged non-payment of a loan. It appears

that in respect of certain cheques which was handed over to the complainant and which was subsequently dishonored, a complaint under Section 138 of the Negotiable Instruments Act had been filed in the year 2006 wherein the accused no.3 was acquitted. It is thereafter in 2007 this complaint was filed. The impugned order indicates that since the year 2008 the complainant had failed to take the steps to secure the presence of accused no.2 and although accused no.3 had been attending regularly, the complainant remained absent often and he had neither adduced any evidence before charge against accused no.3 nor taken steps to secure the presence of accused no.2.

2. On 18th June, 2015 the complainant and his Advocate were absent but an application was tendered by an another Advocate seeking exemption. The Court declined to consider the request since the Advocate concerned had no authority to appear on the said date and concluded that the complainant was deliberately avoiding leading evidence before charge by taking no steps to secure and therefore delaying the matter. Accordingly, an order of discharge under Section 245 of Cr.P.C. was passed.
3. Today, the learned counsel appearing for the applicant submits that the procedure followed by the Magistrate was incorrect and that the Magistrate had not complied with the provisions of Section 244 of the Act and evidence ought to have been adduced and that the applicant-complainant was always ready and willing to do so. It was submitted that on the date in question he was not in Mumbai and he had gone to his

native place due to demise of his father-in-law. His Advocate could not attend because he had met with an accident. He relied upon the copies of a railway ticket and a medical certificate dated 17th June, 2015. It is his case that the request made in writing was not accepted. He submits that the complainant could not lead evidence earlier since the original documents had been filed either in the trial Court or before this Court in proceedings arising out of the dismissal of the complaint filed under Section 138 of the Negotiable Instruments Act being complaint no.5220/SS/2006. Even today he is unable to state whether the documents are available in this Court or in the lower Court. In view of this, it is contended that he will lead evidence in future but it is not certain when. In the circumstances, the impugned order cannot be faulted and it is certainly not perverse. I do not find any reason to interfere in the present application. Therefore I pass the following order:-

- (i) Application is rejected.
- (ii) No orders as to costs.

(A. K. MENON, J.)