

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3844 OF 2016

MANOHAR PAMANDAS JANI

)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.S.P.Rajepandhare, Advocate for the Petitioner.

Mr.U.P.Warujikar, Advocate for Respondent No.2.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th SEPTEMBER 2017

P.C. :

1 Rule. Rule is made returnable forthwith. Heard by consent finally.

2 By this writ petition, the petitioner / original complainant in S.T.C. No.390 of 1999 is challenging the order dated 17th October 2014 passed by the learned Judicial Magistrate First Class (JMFC), Solapur, thereby dismissing his complaint and

acquitting respondent no.2 herein of the offence punishable under Section 138 of the Negotiable Instruments Act.

3 Brief facts leading to the institution of the present petition can be summarised thus :

The petitioner filed a complaint alleging the offence punishable under Section 138 of the Negotiable Instruments Act against respondent no.2 herein, with an averment that respondent no.2 had issued two cheques – one dated 30th June 1997 and the another dated 31st March 1999 towards discharge of legally recoverable debt, but both cheques came to be dishonoured. After few rounds of litigation, said complaint survived so far as second cheque dated 31st March 1999 is concerned. Respondent no.2 / original accused preferred Criminal Writ Petition bearing no.709 of 2003 before this court challenging the order below Exhibit 48 passed by the learned Chief Judicial Magistrate on 21st August 2002 in the criminal case filed by the petitioner. This court by an order dated 18th July 2005 was pleased to admit the said writ petition filed by respondent no.2 and granted interim relief in

terms of Prayer Clause (b). Prayer clause (b) in Criminal Writ Petition No.709 of 2003 filed by respondent no.2 / original accused reads thus :

“(b) During pendency of the above referred writ petition, be pleased to grant stay to the further hearing of S.T.C. No.390 of 1999 pending before learned C.J.M. Solapur.”

4 It is seen that during pendency of the writ petition filed by respondent no.2 / original accused and when stay to further proceedings in S.T.C. No.390 of 1999 was in operation, the learned JMFC, Solapur, ventured to take up the said stayed proceedings for further orders and by the impugned order dated 17th October 2014 was pleased to dismiss the complaint by observing that the petitioner /complainant is not present before the court for more than 1 year which shows that he is not interested in prosecuting the case. The learned JMFC, Solapur, further ventured to mention that the writ petitioner / complainant has not supplied information about the criminal writ petition in order to secure the presence of accused by taking proper steps.

The learned JMFC then indulged in surmises and conjectures by holding that the said writ petition might have been decided within the time span of eight years. Accordingly, S.T.C. No.390 of 1999 was dismissed by the learned JMFC, Solapur, by the impugned order.

5 Heard the learned advocate appearing for the petitioner as well as the learned advocate appearing for respondent no.2 / original accused. The learned advocate appearing for respondent no.2 / original accused argued that the petitioner / original complainant had alternate remedy to approach the learned Sessions court in its revisional jurisdiction. He further argued that, with passage of time, Writ Petition No.709 of 2003 came to be disposed of on 17th February 2017 by this court when it was informed to this court that the complaint in the trial court is disposed of resulting in acquittal of the accused. Therefore, in submission of the learned advocate appearing for respondent no.2 / original accused, the writ petition deserves to be dismissed.

6 I have carefully considered the rival submissions and also perused the documents made available on record. Undisputedly, till 17th February 2017, stay to further proceedings in S.T.C. No.390 of 1999 was in operation. In such situation, it was not at all necessary for the writ petitioner / complainant to attend the court of learned JMFC, Solapur, where the said proceedings were pending. Because of stay granted by this court, to the further proceedings in the said criminal case at the instance of respondent no.2 / original accused, it was not possible for the writ petitioner / complainant to take steps in the matter for securing presence of respondent no.2 / original accused before the trial court. It needs to be pointed out that application for issuance of process against respondent no.2 / original accused by moving appropriate application before the trial court, would have amounted to breach of order passed by this court on 18th July 2005 staying the further proceedings in the prosecution. Therefore, reasonings given by the learned trial court for dismissing the complaint cannot be sustained. It was not expected of the learned trial court to indulge in surmises and conjectures in

the matter by recording that the writ petition might have been decided within the time span of eight years.

7 Availability of alternate remedy is not a bar in entertaining petition in an appropriate case. It is well settled that act of the court should not prejudice anybody. In the case in hand, it appears that act of the learned JMFC in dismissing the stayed complaint certainly caused prejudice to the complainant, who is writ petitioner before this court. The impugned order, therefore, deserves to be quashed and set aside, and as such the order :

- i) The impugned order dated 17th October 2014 dismissing the complaint S.T.C. No.390 of 1999 filed by the writ petitioner, passed by the learned JMFC, Solapur, is quashed and set aside.
- ii) The complaint is restored to the file of the learned JMFC, Solapur, with a direction to dispose of the same, according to law.
- iii) Rule is made absolute in above terms.

(A. M. BADAR, J.)