

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4886 OF 2015**

Shri. Kailas Maruti Ware Petitioner

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Z.M. Avhad, Advocate for Petitioner.

Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 23rd January, 2017

P.C.

1 By the order dtd. 17th March, 2012, the petitioner has been convicted of the offence punishable under Section 138 Negotiable Instruments Act and sentenced to suffer simple imprisonment of two months. He was directed to pay a sum of Rs.50,000/- to the complainant by way of compensation in two instalments. The first instalment of Rs.25,000/- was to be paid on/or before 17th April, 2012 and the balance amount within a period of one month thereafter i.e. on/or before 15th May, 2012. The petitioner challenged the order in the District Court by preferring appeal being Criminal Appeal No.66 of 2012. Three years thereafter, when the appeal was taken up for hearing, the

petitioner and advocate were absent. They were absent since 24th September, 2014. The Sessions Court therefore examined the legality and correctness of the judgment and order and by it's reasoned order dtd. 31st January, 2015 dismissed the same.

2 Mr. Avhad, the learned advocate appearing for the petitioner today has only one argument to make. He submits that the petitioner desires to compromise the matter. However, according to him, immediate compromise is not possible because respondent no.2, which is Sahakari Patsanstha has gone in liquidation and an Administrator has been appointed to look after it's management. He submits that the petition may either be admitted or be remanded to the Sessions Court for fresh hearing of the appeal, which would give an opportunity of settlement to the petitioner. As regards the absence before the Sessions Court, the petitioner claims that at the relevant time, he had left Nasik city and as such was unable to remain present before the court.

4 Mr. Avhad submits that as regards the merits of the decision of the trial court, he does not desire to make any submissions because the petitioner desires to compromise the dispute. According to him, at the relevant time, the petitioner was an auto-rikshaw driver. However, as on today, he is not doing anything and that the petitioner's wife would be supporting him in making the payment of compensation. None

of the arguments advanced by Mr. Avhad can be considered for the purpose of setting aside the reasoned impugned orders.

5 The petitioner was convicted of the offence punishable under Section 138 Negotiable Instruments Act on 17th March, 2012. His appeal against that order was dismissed on 31st January, 2015. Since that date, till date, he has not surrendered in-compliance of the orders against him, which would mean that he has been absconding for almost two years. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)