

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.168 OF 2016

(For Leave to Appeal – Private)

WITH

CRIMINAL APPLICATION NO.169 OF 2016

(For Leave to Appeal – Private)

Shri.Shrikant R. Risvade ... **Applicant**

V/s.

Shri.Shrimant Rajendra P.Patwardhan & Anr. ... **Respondents**

.....

Mr.Tushar Khairnar i/b. Mr.Umesh R. Mankapure, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 12th SEPTEMBER 2018.

P. C. :

1 Heard.

2 Leave to appeal, as prayed, is granted.

3 Memos of applications for leave to appeal is considered as Memo of Appeal on effecting necessary amendments. Amendment are effected forthwith.

4 Admit. Heard finally in view of notice of final disposal and short point involved in these appeals.

5 Both these appeals are being decided by this common Judgment and Order as the learned trial Court vide Orders dated 26/02/2016 was pleased to dismiss the Summary Criminal Case No.24 of 2015 and Summary Criminal Case No.26 of 2015 for want of prosecution by the appellant/original complainant. The said Orders dated 26/02/2016 passed on Exhibit 1 are impugned in both these appeals.

6 Despite service of notice of final disposal, respondent No.1/original accused is absent.

7 Heard the learned Advocate appearing for the appellant/original complainant. The learned Additional Public Prosecutor appears for the respondent No.2/State.

8 Facts in brief are thus :

It is case of the appellant that he attempted to purchase 24 *acres* and 30 *gunthas* land belonging to *Devsthan* Trust of Sangli for a total consideration of Rs.35,00,000/-. An amount of Rs.17,00,000/- was paid by the appellant to the respondent No.2 towards earnest amount, the respondent No.2 being the Trustee of the said *Devsthan*. Ultimately, the transaction

could not be materialized because of some technical difficulties. Hence, respondent No.1/original accused gave two cheques; one for Rs.10,00,000/- and another for Rs.7,00,000/- to the appellant towards refund of the earnest amount. However, both those cheques came to be dishonoured for want of funds. Hence, the subject Summary Criminal Cases came to be filed by the appellant against the respondent No.1/original accused. Those Summary Criminal Cases came to be dismissed for want of prosecution by the impugned Order dated 26/02/2016 by the learned Judicial Magistrate First Class, Tasgaon, District Sangli. While dismissing those complaints, the learned J.M.F.C. observed that the appellant has not taken steps for securing presence of the accused(respondent No.1) since beginning and he was absent on 06/10/2015, 04/12/2015 and 18/02/2016.

9 After careful consideration of the argument advanced by the learned Advocate appearing for the appellant/original complainant and from perusal of the record, I am of the considered opinion that the impugned Orders passed below Exhibit 1 on 26/02/2016 in both Summary Criminal Cases bearing No.24 of 2015 and 26 of 2015 needs to be quashed and set aside.

10 Perusal of the record reveals that the appellant has taken all necessary steps for effecting service on the respondent No,1/original accused. As presence of the respondent No.1

/original accused could not be secured by ordinary mode of service, the appellant had applied for effecting service on respondent No.1/original accused by issuing notice by Registered Post Acknowledgment Due. Record reveals that on such application moved by the appellant, necessary Orders were passed. One such notice issued in Summary Criminal Case No.26 of 2015 came back with the endorsement on the postal envelope that the respondent No.1 has gone out of station. However, the record reveals that another notice in Summary Criminal Case No.26 of 2015 sent by the Registered Post A.D. was not claimed by the respondent No.1/original accused.

11 In this view of the matter, it cannot be said that the appellant had not taken effective steps for serving respondent No.1/original accused and securing his presence. The record also reveals that on 06/10/2015, the Presiding Officer of the trial Court was deputed for training and as such, it was not expected of the appellant to attend the Court on that day.

12 Similar is the case in respect of Sum.Cri.Case No.24 of 2015. In that case also, the appellant time and again moved application for effecting service on the respondent No.1/original accused by Registered Post A.D.. One such envelope of the registered post sent for effecting service on respondent No.1/original accused was returned by Postal Authority with an endorsement that the respondent No.1 has gone out of station.

13 In this view of the matter, the learned trial Court was not justified in dismissing the complaints for want of prosecution by noting absence of the appellant//original complainant. It needs to be noted that primary function of the Court is to adjudicate the dispute on its own merit rather than adhering to the technicality of law. In the case in hand, amount of cheque is substantial and the cheques were issued allegedly for refund of earnest amount paid by the appellant to the respondent No.1 for purchase of land of *Devsthan*. The appeals, therefore, needs to be allowed. Hence, the Order :

ORDER

- (i) Both the appeals are allowed.
- (ii) The impugned Order dated 26/02/2016 passed by the learned Judicial Magistrate First Class, Tasgaon, District Sangli dismissing the complaints bearing Summary Criminal Case No.24 of 2015 and Summary Criminal Case No.26 of 2015 are quashed and set aside.
- (iii) The complaints are restored to the files of learned Judicial Magistrate First Class, Tasgaon, District Sangli with a direction to dispose of the same according to law.
- (iv) Record and Proceedings be sent back to the Court of learned Judicial Magistrate First Class, Tasgaon, District Sangli expeditiously.

(A.M.BADAR J.)