

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 15 OF 2015

Shri. Ramchandra Anna PhatakApplicant.

Vs.

Shri Bhagwan Abaji Khutwad & Anr.Respondents.

Mr. Sachin Deokar i/by V.V. Purwant for the Applicant.

Mr. Anil Kharatmol for the Respondent No.1.

Mr. V.V. Gangurde, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 3rd APRIL, 2018.

P.C.:-

This is an Application under Section 378(4) of Cr.P.C. for leave to file Appeal against the impugned Order dated 1st November 2014, passed by the Judicial Magistrate, First Class, Panvel in S.C. No. 3018 of 2012 under Section 256 of the Cr.P.C. thereby, dismissing the complaint of the Applicant filed under Section 138 of the Negotiable Instruments Act, for want of prosecution.

2 Heard the learned counsel for the Applicant, the learned counsel for the Respondent No.1 and the learned APP

3 The record indicates that, as the Applicant remained absent before the Trial Court for more than two consecutive occasions,

the Trial Court dismissed the said complaint under Section 256 of Cr. P.C. and acquitted the Respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

4 The learned counsel for the Applicant submitted that the absence of the Applicant before the Trial Court was not deliberate and due to miscommunication between him and his advocate, he did not remain present before the Trial Court on certain occasions. He further submitted that, hereinafter the Applicant will sincerely attend all the dates before Trial Court without fail and will co-operate with it in speedy disposal of the case.

5 The learned counsel for the Respondent No.1 vehemently opposed the Application and submitted that, even the present Application preferred by the Applicant was dismissed on earlier occasion for want of prosecution and it was subsequently restored on the motion moved by the Applicant. He submitted that the Applicant is not serious enough in prosecuting the said complaint and therefore, the Trial Court has dismissed the same by the impugned order.

6 In view of the facts mentioned in para No.4 above and in the interest of justice, the impugned order dated 1st November 2014, deserves to be quashed and set aside and the complaint will have to

be heard on its own merit, subject to the condition that, the Applicant shall pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the High Court Legal Aid Committee within a period of 3 weeks from today. The payment of cost shall be the condition precedent for setting aside the impugned Order and for restoration of the complaint.

7 The Applicant is directed to produce the receipt of payment of said cost before the Trial Court on the first date of hearing.

8 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)