

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.42 OF 2018

M/s.BCH Electric Limited

Applicant

versus

Sunil Rasal (Proprietor, M/s.R.C.Automation)
and another

Respondents

Mr.A.N.Pathan for applicant.

Mr.Y.M.Nakhwa, APP, for respondent no.2-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th June 2018

PC :

1. The petitioner is the original complainant. The complaint was filed for offence under Section 138 of Negotiable Instruments Act in the Court of Judicial Magistrate, First Class, at Pune. The complaint relates to dishonour of cheque issued by the accused for amount of Rs.5,24,567/-. The petitioner had presented the complaint before the Trial Court on 21st January 2015.

2. Learned JMFC by order dated 3rd August 2017 dismissed the complaint for default. While passing the said order it was observed that the complaint was kept for taking further steps i.e. verification of the complainant, however, despite ample opportunities being given to the complainant, he failed to take further steps in the matter. It is further observed that the complainant and his advocate were absent when the matter was called out on 3rd August 2017 and therefore the Court proceeded to pass aforesaid order.

3. The roznama of the proceedings has been annexed to the petition. From the roznama it is apparent that the complainant was present on 21st January 2015 and the case was adjourned for recording verification to 19th August 2015. The complainant and his advocate were also present on 19th August 2015. Thereafter the proceedings were adjourned to 31st October 2015 for recording verification. On that date also the complainant and his advocate were present and the case was adjourned for recording verification. The roznama refers to three subsequent dates viz 18.12.2015, 15.2.2016 and 26.5.2016. However, except noting the date, the roznama of the proceedings on that dates is not reflected therein. Learned advocate for the petitioner submitted that on those dates the matter was not listed as the papers were not found. Thereafter the roznama dated 3rd August 2017 mentions that the complainant and his advocate were absent and the complaint was dismissed for default.

4. The verification statement was not recorded and the complaint was pending for the said purpose. From the roznama it is clear that the petitioner and his advocates were present on the earlier occasions and the case was adjourned for recording verification. Although the applicant and his advocate were not present on 3rd August 2017, the Court ought not to have dismissed the complaint in the light of earlier roznama and could have given an opportunity to the complainant to remain present to pursue the proceedings. The roznama dated 18.12.2015, 15.2.2016 and 26.5.2016 is silent. The complainant ought to be given an opportunity to prosecute his complaint on merits. In the circumstances, the order dated 3rd

August 2017 is required to be set aside. Hence, I pass following order :

ORDER

- (i) Writ Petition No.42 of 2018 is allowed;
- (ii) The order dated 3rd August 2017 passed by 22nd Judicial Magistrate, First Class, Pune in SCC No.2102 of 2015 is set aside;
- (iii) The complaint is restored to its original file and number and the Trial Court is directed to proceed with the complaint in accordance with law;
- (iv) The petitioner is directed to appear before the Trial Court with copy of this order on 9th July 2018.

(PRAKASH D. NAIK, J.)

MST