

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 107 OF 2015**

State Bank of India

....Applicant.

Vs.

Tahakutty Abdul Wahid & Anr.

....Respondents.

Ms. Bindu Thomas for the Applicant.

Mr. V.N. Ajitkumar for the Respondent No.1.

Mr. A.R. Kapadnis, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 24th APRIL, 2018.****P.C.:-**

By the aforesaid Application under Section 378 (4) of the Cr.PC., the Applicant has sought leave to file Appeal against the Order dated 9th October, 2013, passed below 'Exhibit-1' by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai in C.C. No. 2804151/SS/2012, dismissing the Complaint under Section 256 of Cr. P.C. and acquitting the Respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

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

APP for the State. Perused the record.

3 The learned counsel appearing for the Respondent No. 1 vehemently opposed the Application. He submitted that, the Applicant was not diligent enough in prosecuting the Complaint, which was filed in the year 2012. No steps have been taken since long to pursue with the complaint and therefore, the Trial Court was constrained to dismiss it for non-prosecution and acquitted the Respondent from the charges leveled against him. He further submitted that, it is due to the lethargic approach of the Applicant, the Respondent No. 1 has to face the prosecution for last more than 6 years. He therefore, prayed that, the present Application may be dismissed *in-limine*.

4 A bare perusal of the record would indicate that the Complainant is a Public Sector undertaking and it is alleged that the Negotiable Instrument of high value issued in favour of the Complainant by the Respondent No.1 has been dishonoured. At the same time, it is to be noted here that the Complainant was not serious enough in prosecuting the Complaint and therefore it was dismissed for want of prosecution.

5 In view of the above and in the interest of justice, it is

necessary that, the said Complaint be heard on its own merits, by giving an opportunity to the Applicant.

In view thereof, I am inclined to quash and set aside the impugned Order by imposing a cost of Rs.25,000/- (Rupees Twenty Five Thousand only). The said cost shall be paid to the High Court Legal Aid Committee i.e. in favour of "*High Court Legal Aid Fund*" by the Applicant within a period of three weeks from today. The payment of cost in the Application shall be the condition precedent in quashing and setting aside the impugned Order and for restoration of the said Complaint.

6 Hence the following order-

- a) The Applicant is granted leave to file present Appeal.
- b) The present Application is converted into Appeal.
Appeal be numbered.
- c) The Appeal is allowed in the aforesaid terms,
subject to condition of payment of cost, as
aforestated.

7 It is made clear that, if the Applicant fails to deposit the aforesaid cost within the stipulated period, the Complaint shall stand

dismissed without further reference to this court.

It is further made clear that the time to make payment of cost shall not be extended, under any circumstances and/or on any count.

(A.S. GADKARI, J.)