

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.303 OF 2015

Purohit Steels Pvt. Ltd.

...Appellant

V/s.

The State of Maharashtra & Ors.

...Respondents

.....

Ms. Mallika A. INgale, Advocate for the Appellant.

None for respondent Nos.2 and 3.

Mr. S.V. Gavand, APP for respondent No.1/State.

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CORAM : A.M.BADAR, J.

DATED : 17th OCTOBER 2018.

P.C. :

1. By this appeal, the appellant/original complainant is challenging the Order dated 25.02.2013 passed below Exh.1 in Criminal Case No.1157/SS/2011 between the parties, wherein in exercise of powers under Section 256 of the Code of Criminal Procedure, the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai was pleased to dismiss the complaint filed by the appellant/original complainant for the offence punishable

under Section 138 of the Negotiable Instruments Act, 1881 for want of prosecution.

2. The learned APP appears for respondent No.1/State.

3. The learned counsel appearing for respondent Nos.2 and 3 is absent.

4. The appellant/original complainant has already deleted respondent No.4 from the array of respondents.

5. Heard the learned counsel appearing for the appellant/original complainant.

6. Admit.

7. Heard finally considering the short controversy involved in the instant appeal.

8. The learned counsel for the appellant/original complainant argued that the learned trial Court had directed issuance of bailable warrant against the original accused No.3 on 24.08.2012. On 02.11.2012 the complaint was adjourned to 03.02.2013 which happens to be Sunday. Then within a short period of time though bailable warrant was not returned either executed or unexecuted, noting absence of the complainant, the complaint was dismissed under Section 256 of the Code of Criminal Procedure. According to the learned counsel for the appellant/original complainant, this course of action ought not to have been taken because the complaint was for dishonour of cheque amounting to Rs.3,50,000/-. The complaint itself was not ready for hearing.

9. I have considered the submissions so advanced and perused

the record made available. The subject criminal case was for dishonour of the cheque amounting to Rs.3,50,000/-. The order-sheet shows that the appellant/original complainant was diligent in attending the said criminal case. In fact, on application of the appellant/original complainant, on 24.08.2012 bailable warrant was issued against the original accused No.3. Thereafter, on one occasion, the matter was adjourned to Sunday and that is how the appellant/original complainant could not attend next two dates i.e. on 04.02.2013 and 25.02.2013. The complaint was, therefore, dismissed for want of prosecution on 25.02.2013. In fact, when the bailable warrant was issued against the original accused No.3 and when it was not returned back either executed or unexecuted, there was no propriety in dismissing the complaint particularly when in past the appellant/original complainant was diligent in attending the Court.

10. In this view of the matter, the impugned Order cannot be sustained. As such, the order;

- : ORDER : -

- (i) The appeal is allowed.
- (ii) The impugned Order dated 25.02.2013 passed by the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai, below Exh.1 in Criminal Case No.1157/SS/2011 is quashed and set aside.
- (iii) The said complaint is restored to the file of the concerned Court for disposal according to the law.

- (iv) The appeal is accordingly disposed of.
- (v) Needless to mention that the original complaint is not restored as against the original accused No.3, who is not a party to the instant appeal because of his deletion from the array of the respondents.

(A.M.BADAR J.)