

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 91 OF 2016

Shri Rajesh Ramchandra Suryawanshi

....Applicant.

Vs.

M/s. Sankalp Constructions & Anr.

....Respondents.

Mr. Rahul Kulkarni for the Applicant.

Ms. V.S. Mhaispurkar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 26th MARCH, 2018.

P.C.:-

This is an Application under Section 378 (4) of Cr.P.C. for leave to file Appeal against the Order dated 24th June, 2014 passed by the learned Judicial Magistrate, First Class, Jaysingpur in Summary Criminal Case No. 33 of 2011, thereby disposing off the said Complaint for want of non-prosecution and acquitting the Respondent No. 1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for the Applicant. The note put up by the Registry indicates that the Respondent No.1 is duly served. Despite service, none appeared for the Respondent No.1.

3 The Roznama annexed to the Application reveals that the Applicant remained absent intermittently, however on many occasions, he was present before the Trial Court. The learned counsel appearing for the

Applicant submitted that, it is due to the communication gap between him and his Advocate, he could not remain present on certain occasions. It is to be noted here that, it was the equal duty of the Applicant to follow his own case and he cannot blame his advocate for his own default.

May that, as it may. However, as the Respondent No.1 is not serious in contesting the present Application, I am inclined to allow this Application by setting aside the impugned Order dated 24th June 2014, subject to the condition that the Applicant shall pay a cost of Rs.10,000/ (Rupees Ten Thousand only) to the High Court Legal Aid Committee within three weeks from today.

4 The impugned Order dated 24th June, 2014 passed by the learned Judicial Magistrate, First Class, Jaysingpur in Summary Case No. 33 of 2011 is hereby quashed and set aside and the Complaint is restored to the file, subject to the afore-stated condition of payment of cost, in the present Application.

5 The Applicant shall produce the receipt of payment of cost before the Trial Court on the first date of hearing along with the present Order.

6 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)