

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.90 OF 2018

Rajkumar B. Agarwal through
constituted Attorney Mr. P Awankumar

B. Agarwal ... **Applicant**

V/s.

Rajeev Lalchand Goyal and anr. ... **Respondents**

Mr.Shailesh Ishwarlal Kantharia for the applicant.

Ms.Anamika Malhotra, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 14th JUNE 2018.

P.C. :

1. Heard leave as prayed for is granted.
2. Admit.
3. Heard finally by consent.
4. It is seen from the record made available that the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 came to be filed by the applicant / appellant in the Court of Learned Metropolitan Magistrate, Andheri, Mumbai which came to be

registered as CC/1873/SS/2014. After perusal of the verification statement and documents, the Learned Metropolitan Magistrate vide order dated 25th July, 2014 was pleased to issue process against respondent no.1 for the offence under Section 138 of the Negotiable Instruments Act, 1881. Then on 27th February, 2015, the learned Metropolitan Magistrate at Andheri, on the basis of judgment of the Hon'ble Apex Court in the matter of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra and another*** decided on 1st August, 2014 was pleased to direct return of the complaint to the applicant/appellant for refiling the same before the concerned court in whose jurisdiction drawee bank is located.

5. That is how the complaint, came to be refiled by the applicant/appellant in the Court of the Learned Metropolitan Magistrate at Mazgaon on 8th April, 2015. On 10th April, 2015, it came to be dismissed for want of prosecution by observing that the complainant i.e. the applicant/appellant failed to remain present for verification and has failed to produce original documents.

6. Heard the learned Advocate appearing for both the parties. The learned Advocate appearing for respondent/accused vehemently argued that the complaint was not properly reverified despite direction contained in order 27th February, 2015 passed by the Learned Metropolitan Magistrate, Andheri and therefore, the complaint came to be rightly dismissed for want of prosecution.

7. Primary function of the Court is to adjudicate issue on its own

merit by according proper and reasonable opportunity of hearing to the affected parties. In the case in hand, on 8th April, 2015, the complaint was refiled before the proper court. Prior to that the Court of the competent Jurisdiction had already recorded verification statement and process was also issued against the accused. Therefore, the learned lower Court totally erred in dismissing the complaint by noting that the complainant failed to produce the original documents and failed to remain present for verification and therefore the Court cannot take cognizance of the complaint. In fact, the cognizance of the offence was already taken. The impugned order therefore suffers from non application of mind apart from it being perverse. Therefore, the order;

:: ORDER ::

- (i) The appeal is allowed.
- (ii) The impugned order dated 10th April, 2015 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai in Misc. No.559/mist2015 is quashed and set aside. The complaint filed by the applicant/appellant is restored to the file of the learned Metropolitan Magistrate for disposal according to the law.
- (iii) Parties are directed to appear before the Court of the

learned Metropolitan Magistrate on 24th July, 2018 and
shall abide by the further direction of the said Court.

(A.M.BADAR J.)