

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2758 OF 2018

State Bank of India	... Petitioner
Vs.	
State of Maharashtra	... Respondent

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Mr. Prakash Kadam I/by DMS Legal for the Petitioner.
Mr. Y.M. Nakhwa, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.
DATE : 26th JULY, 2018.

P.C.

1. Petitioner is the original complainant in RCC/284/2017. The complaint was filed for the offence punishable under Sections 464, 403, 406, 418, 420 and 120B read with Section 120-B of the Indian Penal Code. After the complaint was filed before the court of Learned Judicial Magistrate First Class, Vashi, the matter was kept for verification statement. Subsequently, the verification statement was recorded. Matter was kept for arguments. The trial Court thereafter by order dated 20th January, 2018 dismissed the complaint.

2. The petitioner thereafter preferred revision application

before the Sessions Court. The said revision application has been dismissed by the learned Sessions Judge by order dated 9th April, 2018. Hence, the petitioner has approached this Court challenging both the orders passed by the Courts below.

3. It is submitted by the learned counsel for the applicant that the learned Magistrate dismissed the complaint for not taking steps. The complaint was dismissed before issuing the order of process. Learned Sessions Judge has committed an error in dismissing the revision application on the ground that the same is not maintainable.

4. It is submitted that the matter was kept for verification on 6th November, 2017 and the verification was recorded by the Court and the case was kept for arguments on 5th December, 2017. Due to bad weather and cyclone warning the advocate for complainant/petitioner could not attend the matter and requested her colleague, advocate to attend the matter, however, she reached late in the Court on 5th December, 2017. The learned advocate inadvertently noted the next date as 25th January, 2018 instead of 19th January, 2018. Hence, no one attended the Court on on behalf of complainant on 19th January, 2018 when the matter was listed. On 19th January, 2018, the matter was again

kept on next date i.e 20th January. 2018. On 20th January, 2018, the matter was dismissed for default. On 25th January, 2018, when the advocate for complainant appeared before the trial Court, she found that the matter was not shown on board. On making inquiry she found that the matter was dismissed on 20th January, 2018.

5. On perusal of the impugned order, it is apparent that the complaint was due for argument and further step after verification statement of the complainant. Roznama dated 19th January, 2018 shows that complainant and advocate absent. Put up as last chance for arguments. Awaiting summons. On 20th January, 2018, the applicant and advocate were absent. Case was dismissed. The earlier Roznama shows that after verification, the complainant was absent on four dates of hearing. The trial Court passed a separate speaking order dated 20th January, 2018. It was observed that, the complainant is absent after repeated calls. None appeared since last many dates. No steps taken for securing presence of accused. Complainant lost interest in the matter and no purpose will be served by keeping the matter alive. Hence, case stands dismissed for want of prosecution. The dismissal of the complaint is for not taking steps and it was prior to the Court taking cognizance of the

matter i.e before issuance of process. Learned Sessions Judge has committed an error in dismissing the revision application on the ground that the petitioner ought to have preferred an appeal against the impugned order. As stated above, the order is passed before the issuance of process.

6. Taking into consideration the fact that the complaint was dismissed only for not taking step and absence of complainant for the reasons stated by petitioner and with a view to give an opportunity to complainant to prosecute the complaint on merits the same can be restored. Although, the trial Court had adjourned the proceedings on account of absence of complainant and than dismissed the same, in the interest of justice, the impugned order will have to be set aside. However, the impugned order also mentions that the complainant has not taken steps for securing the presence of accused. It is submitted by advocate for petitioner that no process was issued. The Roznama annexed to the petition shows that the complaint was kept for arguments. Although the revisional Court has committed error in dismissing revision, instead of remanding the matter back to Sessions Court, it would be appropriate to quash the orders and restore the complaint. Hence, I pass the following order.

ORDER

- (i) Impugned order dated 20th January, 2018 passed by the learned Judicial Magistrate First Class, Vashi, Navi Mumbai and order dated 9th April, 2018 passed by learned Additional Sessions Judge, Thane are hereby set aside;
- (ii) The complaint bearing No. RCC/284/2017 is restored to the file of learned Judicial Magistrate First Class, Vashi, Navi Mumbai;
- (iii) Trial Court is directed to proceed with the complaint in accordance with law;
- (iv) Petitioner is directed to appear before the trial Court on 13th August, 2018 at 11 a.m.
- (v) Writ Petition stands disposed of.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.08.04
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(PRAKASH D. NAIK, J.)