

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO. 341 OF 2015
WITH
CRIMINAL APPLICATION NO. 112 OF 2015
WITH
CRIMINAL APPLICATION NO. 342 OF 2015
WITH
CRIMINAL APPLICATION NO. 343 OF 2015
WITH
CRIMINAL APPLICATION NO. 344 OF 2015
WITH
CRIMINAL APPLICATION NO. 345 OF 2015
WITH
CRIMINAL APPLICATION NO. 346 OF 2015**

LIC Housing Finance Limited

....Applicants.

Vs.

M/s. Citi Associates & Ors.

....Respondents.

Ms. Usha K. Srivastava for the Applicants.

Mr. V.V. Gangurde, APP for the Respondent-State.

Smt. Sonal Parab for the Respondent Nos. 1 to 4.

CORAM : A. S. GADKARI, J.

DATE : 26th MARCH, 2018.

P.C.:-

By the aforesaid Applications under Section 378 (4) of the Cr. P.C., the Applicants have sought leave to file Appeal against the Order dated 20th July, 2012, passed below Exhibit 1 by the learned Judicial Magistrate, First Class, 3rd Court, Vashi, Navi Mumbai in

S.C.C. Nos.3319 of 1999, 154 of 2000, 226 of 1999, 928 of 1999, 155 of 2000, 929 of 1999 and 2572 of 1999 respectively thereby, dismissing the Complaints under Section 256 of Cr. P.C. and acquitting the Respondents from the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel appearing for the Applicants, the learned counsel appearing for the Respondents and the learned APP for the State. Perused the record.

3 The learned counsel appearing for the Respondent Nos. 1 to 4 vehemently opposed the Applications. She submitted that the Applicants were not diligent enough in prosecuting the Complaints, which were filed in the year 1999 and/or 2000 and as on several occasions the Complainant and its Advocate remained absent, therefore, on 12th July 2012, the Trial Court gave warning to the Applicants for taking further steps and to remain present on that particular day. She further submitted that, on the date of passing of the impugned order, the representative of the Applicants and/or its Advocate remained absent and therefore, the Trial Court was constrained to dismiss the complaints, thereby acquitting the Respondents from the charges leveled against them. She submitted

that, it is due to the lethargic approach of the Applicants, the Respondents have to face the prosecution for last more than 10 years. She therefore, prayed that, the present Applications 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 Instruments of high value issued in favour of the Complainants by the Respondents have been dishonoured. At the same time, it is to be noted here that the Complainants were not serious enough in prosecuting the Complaints and therefore, were dismissed for want of prosecution.

5 In view of the above and in the interest of justice, it is necessary that, the said Complaints be heard on its own merits, by giving an opportunity to the Applicants.

In view thereof, I am inclined to quash and set aside the impugned Orders by imposing cost of Rs.25,000/- (Rupees Twenty Five Thousand only) in each Application. The said cost shall be paid to the High Court Legal Aid Committee by the Applicants within a period of three weeks from today. The payment of cost in each Application shall be the condition precedent in quashing and setting

aside the impugned Orders and for restoration of the said Complaints.

6 Hence the following order-

- a) The Applicants are granted leave to file present Appeals.
- b) The present Applications are converted into the Appeals.
Appeals be numbered.
- c) The Appeals are allowed in the aforesaid terms, subject to condition of payment of cost, as aforestated.

7 It is made clear that, if the Applicants fail 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.)