

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

**CRIMINAL APPLICATION NO.247 OF 2016
(For Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2016**

Sham Narayan Rudrakar

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....

Mr.Ujwal R. Agandseurve, Advocate for the Applicant.

Ms.Neeta S. Jain, APP for the Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 14, 2018.

P.C. :

None appears for respondent no.2, though served.

Parties were put to notice that the application would be disposed of finally at the stage of admission.

2 Applicant is the complainant in S.T.C.No.22814 of 2014. Complaint was filed in the Court of learned J.M.F.C. Court, Pune, for offence punishable under Section 138 of the Negotiable Instruments Act, 1881, on 19th December, 2014. Verification statement of the complainant was recorded.

3 The case of the complainant is that in discharge of liability, the accused had issued cheques of Rs.3,00,000/- which were dishonoured. In spite of notice, payment was not made. The

applicant was absent on 17th June, 2015. The Court observed that the complainant and his advocate are absent since long time and by order dated 17th June, 2015, kept the proceedings for order. Learned Magistrate vide order dated 28th April, 2016, dismissed the complaint under Section 256 of Criminal Procedure Code and the accused was acquitted of the offence. While passing the said order, the Court has observed that the complainant and his advocate was absent for a long time and the case was kept for taking steps but, the complainant failed to do so. Hence, case was disposed off under Section 256 of Code of Criminal Procedure.

4 Learned advocate for the applicant submitted that the complainant was absent on 17th June, 2015, due to ill health. He was also absent on 28th April, 2016. It is submitted that the applicant is a senior citizen aged about 72 years and due to various ailments could not remain present before Court. The applicant has annexed copy of medical certificate dated 30th March, 2016. Trial Court had recorded the verification statement and the case was kept for passing orders of issuance of process. It is further submitted that the Court ought not to have dismissed the complaint under Section 256 of Criminal Procedure Code. It is further submitted that the complaint was due for the order of process and the question of taking any other step does not arise.

5 It appears from Roznama that, the verification statement of the complainant was recorded. However, the Court proceeded to dismiss the complaint under Section 256 of the Criminal Procedure Code. Only on account of absence of the complainant on few occasion, the Court ought not to have dismissed the complaint. The Court should have proceeded to issue the process as verification statement was already recorded. In this circumstances, the impugned order is required to be set aside.

:: ORDER ::

- (i) Leave granted;
- (ii) The impugned order dated 28th April, 2016, passed by J.M.F.C., Pune in S.C.C. No.22814 of 2014, is set aside;
- (iii) The Court of J.M.F.C., Pune, is directed to restore the complaint to its original status and deal with the complaint in accordance with law;
- (iv) Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)