

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.358 OF 2016

Mr. Pratap Dadaso Sawant	...Applicant
V/s.	
The State of Maharashtra & Anr.	...Respondents

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Mr. Arjun S. Pawar, Advocate for the Applicant.

Mr. P.H. Gaikwad, APP for respondent No.1/State.

Mr. Rupesh A. Zade, Advocate for respondent No.2.

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CORAM : A.M.BADAR, J.

DATED : 12th OCTOBER 2018.

P.C. :

1. Heard both sides. Leave, as prayed, is granted.
2. Admit.
3. Heard forthwith considering the fact that the impugned order is an order passed under Section 256 of the Code of Criminal Procedure, dismissing the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act,

1881 for want of prosecution.

4. The learned counsel for the appellant/original complainant argued that the subject Summary Criminal Case No.606/2012 was for dishonour of the cheque received while settling the earlier complaints for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Due to inadvertent, the appellant/original complainant and his advocate lost track of the matter and as such could not attend the Court, resulting dismissal of the complaint.

5. The learned counsel appearing for respondent No.2/original accused opposed the appeal by contending that right from the year 2013, neither the appellant/original complainant, nor his counsel were attending the complaint.

6. I have considered the rival submissions and also perused the Record and Proceedings. Primary function of the Court is to adjudicate the disputes on their own merits. Peculiar facts of the instant case reveals that initially the appellant/original complainant had filed three Summary Criminal Case bearing Nos.964/2005, 233/2005 and 2725/2004 against the respondent

No.2/original accused alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. During pendency of those cases, parties settled the matter outside the Court and Settlement Deed dated 27.01.2011 came to be executed. Respondent No.2/original accused gave six cheques to the appellant/original complainant towards settlement of the entire dispute. One cheque from those cheques dated 20.02.2012 for Rs.25000/- came to be dishonoured. That is how subject Criminal Case No.606/2012 came to be filed. After recording verification statement, process was issued against the respondent No.2/original accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The record shows that the appellant herein had applied for issuance of summons and had also accepted the summons for effecting service on the respondent No.2/original accused. However, summons came back without service. On 06.04.2015, the appellants/original complainant and his advocate were present before the learned trial Court and they applied for issuance of fresh summons. That is how fresh summonses were sent for effecting service on the

respondent No.2/original accused. Those summonses were not served. Subsequently, the appellant/original complainant and his counsel remained absent. The record does not reflect that the summonses issued on 06.04.2015 came back unserved. Still the case was fixed for taking steps and ultimately it was dismissed for want of prosecution on 07.04.2016.

7. Considering the fact that the summary criminal case was for dishonour of the cheque issued by the respondent No.2/original accused for settlement of the earlier summary criminal case regarding the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, as well as the fact that summonses issued on 06.04.2015 did not come back either served or unserved, in my opinion, the learned trial Court was not justified in dismissing the complaint for want of prosecution. The appellant/original complainant deserves one more opportunity to prosecute the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, the order.

- : ORDER : -

- i. The appeal is allowed.

- ii. The impugned order dated 07.04.2016 passed by the learned 4th Judicial Magistrate First Class, Baramati in Summary Criminal Case No.606/2012 between the parties is quashed and set aside.
- iii. The said criminal case is restored to the file of the concerned Court for disposal, according to law.
- iv. The appeal stands disposed off accordingly.
- v. Record and Proceedings be sent back to the learned trial Court forthwith.
- vi. The parties to appear before the learned trial Court on **29th November 2018.**

(A.M.BADAR J.)