

Nalawade

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 494 OF 2013

M/s. Aarti Company ...Applicant.
vs.
Pandharinath R. Bansode ...Respondent.

Mr. Anand Kulkarni for the Applicant.
Mr.V.V.Gangurde, APP for the Respondent-State.

CORAM :A.S.GADKARI, J.
DATE : 27th March, 2018

P.C.

1. This is an application under Section 378(4) of the Cr.P.C. for leave to file appeal against the Order dated 2.7.2013 passed by the Chief Judicial Magistrate, Solapur in STC No.325/2000 thereby acquitting respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.
2. Heard Shri. Kulkarni, learned counsel for the applicant and the learned APP for the State. Respondent No.1 is absent though duly served. Perused the record.
3. The record reveals that the applicant being complainant filed a complaint under Section 138 of the Negotiable Instruments Act to the Chief Judicial Magistrate, Solapur. After issuance of summons, the plea of the accused was recorded on

31.3.2007 and thereafter the applicant filed affidavit of examination-in-chief on 30.7.2007. The record further indicates that, thereafter the matter was adjourned from time to time and on majority of the occasions at the request of the applicant for some or other reason. It is the case of the applicant that, he wanted to produce certain documents on record pertaining to Special Civil Suit No.11/2002 which was pending on the file of Civil Judge, S.D., Solapur. It is the further case of the applicant that as the said documents could not be produced before the Chief Judicial Magistrate, Solapur he could not proceed with the trial and therefore, caused delay in concluding the hearing of the present case. It is to be noted here that, the Court of Civil Judge, S.D., Solapur and the Chief Judicial Magistrate, Solapur are situated in the same precincts/ Court complex and therefore, for not taking effective steps by the applicant for production of the documents from the Court of Civil Judge, S.D. Solapur pertaining to the said civil suit for a period of more than five years speaks volume about the intention of the applicant to conduct the criminal prosecution launched by him against the respondent No.1. It appears from the record that the applicant is more interested in persecuting

the respondent No.1 than prosecuting him for the charges levelled against him. The record further indicates that even on the date of passing of the order dated 2.7.2013 though the Court directed the applicant to under go cross-examination and even thought the Advocate for the applicant was present in Court, the applicant failed to do so and therefore, the Trial Court was pleased to dismiss the complaint and acquit respondent No.1 from the offence alleged against him.

4. In view of the above and after perusing the record this Court is of the opinion that the Trial Court has not committed any error while passing the impugned order dated 2.7.2013. That, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

No case for grant of leave is made out.

5. Application is accordingly rejected.

(A.S.GADKARI, J.)