

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

**CRIMINAL APPLICATION NO.546 OF 2015
(For leave to Appeal – Private)
WITH
CRIMINAL APPEAL NO.728 OF 2018**

Ashok Buildcon Ltd. ... **Applicant/Appellant**
V/s.
The State of Maharashtra & Ors. ... **Respondents**

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Mr.R.S.Apte, Senior Counsel i/b. Mr.A.A.Garge, Advocate for the
Applicant/Appellant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

Ms.Vaishali D.Padale, Advocate for Respondent Nos.2 to 6.

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CORAM : A.M.BADAR J.

DATED : 12th JUNE 2018.

ORAL JUDGMENT :

- 1 Heard.
- 2 Leave, as prayed, is granted.
- 3 Admit.
- 4 Heard forthwith by consent of parties.
- 5 Complaint alleging the offence punishable under
Section 138 of the Negotiable Instruments Act, 1881 came to be
filed by appellant Ashok Buildcon Limited against the respondent
Nos.2 to 6/original accused in the Court of the Judicial Magistrate

First Class at Nashik on 17/12/2013. After hearing the complainant, on 26/06/2014, the learned Judicial Magistrate First Class, Nashik was pleased to issue process against the accused persons for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. However, thereafter the complaint came to be returned to the complainant for presentation before the proper Court and that is how the complaint came to be re-filed in the Court of the learned Metropolitan Magistrate, Mumbai on 29/04/2015. Then, the learned Metropolitan Magistrate, Mumbai directed issuance of notice to the accused persons. Ultimately, on 21/11/2015, marking absence of the complainant as well as his learned Advocate and noting that no steps were taken by the complainant, the complaint came to be dismissed for want of prosecution thereby discharging the accused persons.

6 The learned Advocate for the appellant/original complainant argued that he reached late before the Court on that day and prior to his reaching the Court, the complaint came to be dismissed for want of prosecution. The learned Advocate for respondent Nos.2 to 6/original accused made a statement at bar that on 06/10/2015 itself accused persons after service of notice, attended the Court through their Advocate, but as the complaint was under process of transfer, *vakalatnama* could not be filed.

7 Perusal of the *roznama* of 06/10/2015 shows that the learned Metropolitan Magistrate was on leave on that day, but the complainant as well as the accused persons were represented through their Advocates on that day. Thereafter, noting absence of the parties on 28/10/2015, the complaint was fixed for dismissal and ultimately on 21/11/2015 it came to be dismissed by noting that no steps were taken by the complainant and his Advocate.

8 It is seen that necessary steps for securing presence of the accused persons were already undertaken by the complainant and presence of accused persons was in fact secured on 06/10/2015 itself. In this view of the matter, the learned trial Magistrate was not justified in dismissing the complaint on 21/11/2015 for want of steps by the complainant. The impugned Order of dismissing the complaint as such cannot be sustained. Therefore, the Order :

ORDER

- (i) The appeal is allowed.
- (ii) The impugned Order dated 21/11/2015 dismissing the complaint C.C.No.688/SS/2015 between the parties is quashed and set aside.
- (iii) The complaint is restored to the file of the learned Metropolitan Magistrate, Mumbai.

(iv) Parties to appear before the learned Metropolitan Magistrate, Mumbai, where their complaint is pending on 17th July 2018 and shall abide by further Orders of the said Court.

(A.M.BADAR J.)