

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 451 OF 2017**

Suhas Balraj Salokhe

....Applicant.

Vs.

Ravindra alias Baba Anandrao Devane & Anr.

....Respondents.

Mr. Chetan Patil for the Applicant.

Mr. Kedar Patil, for the Respondent No.1.

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

CORAM : A. S. GADKARI, J.

DATE : 19th APRIL, 2018.

P.C.:-

This is an Application under Section 378 (4) of Cr. PC. for leave to file Appeal against the Order dated 9th November, 2017, passed by the learned 6th Judicial Magistrate, First Class, Kolhapur below Exhibit 1, in Summary Criminal Case No.1561 of 2013, thereby dismissing the Complaint of the Applicant under Section 256 of Cr.P.C. and acquitting the Respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 Heard Mr. Chetan Patil, the learned counsel for the Applicant, Mr. Kedar Patil, the learned counsel for the Respondent No.1 and the learned APP. Perused the record.

3 The learned counsel for the Applicant submitted that it is due to the mis-communication between the Applicant and his Advocate, the Applicant could not attend the Trial Court on more than 3 occasions. He further submitted that, his Advocate had in fact told him that the Applicant need not personally remain present on each and every occasions and his Advocate will take care of the matter. He submitted that, relying on the assurance given by the Advocate, the Applicant did not remain present before the Trial Court as he was under bonafide impression that, after filing of affidavit in lieu of examination-in-chief, he will be called to the Court for cross-examination after completion of other necessary legal formalities. He submitted that, the conduct of the Applicant can be ascertained from the fact that, immediately after the dismissal of the complaint, his Advocate has filed an Application for restoration of the same, which was rejected under Section 362 of Cr.P.C.. He further submitted that, the Applicant has now learnt a lesson and he will hereinafter attend the Trial Court on each and every occasion and in case, the Applicant is unable to attend the Trial Court for some genuine reason, he will file an Application for exemption before the Trial Court. The said statement is accepted.

4 Mr. Kedar Patil, the learned counsel for the Respondent No.1 vehemently opposed the Application and submitted that the Roznama indicates that, the Applicant was consistently absent before the Trial Court and on at least 7 to 8 occasions, he did not remain present and therefore, the Trial Court was pleased to dismiss the Complaint for default under Section 256 of Cr.P.C.. He however, fairly submitted that, if this Court is inclined to interfere with the impugned Order passed by the Trial Court, the Applicant may be saddled with exemplary costs.

5 In view of the above and the facts mentioned in the Application and in the interest of justice, I am inclined to set aside this impugned Order dated 9th November 2017, passed by the Trial Court subject to condition that, the Applicant shall pay a cost of Rs.20,000/- to the High Court Legal Aid Committee, (in the name of “*High Court Legal Aid Fund*”) within a period of 3 weeks from today.

It is made clear that, the payment of cost shall be condition precedent for setting aside the impugned order and restoration of Summary Criminal Case No.1561 of 2013 on the file of the Trial Court. Hence, the following Order.

- a) The impugned Order dated 9th November 2017, passed

below 'Exhibit-1', in Summary Criminal Case No.1561 of 2013, by the learned 6th Judicial Magistrate, First Class, Kolhapur, is hereby set aside and the said Summary Criminal Case No.1561 of 2013 is restored to the file of the Trial Court, subject to the condition that the Applicant shall pay the aforesaid cost within stipulated period.

- b) The Applicant shall produce the receipt of the payment of the cost before the learned Trial Court on the first date of hearing along with the copy of the present order.
- c) The Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)