

THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.555/2018  
IN  
CRIMINAL APPEAL NO.520/2018

Shrikishan S/o Maniklal Lakhotiya,  
aged about 55 Yrs., Occu. Business,  
R/o Plot No.81, Suraj Niwas, Mahesh Colony,  
Chandannagar, Nagpur.

..Applicant.

..Vs..

1. M/s. Jai Ambe Developers,  
through its Partner Avinash  
S/o Tukaram Yawalkar,  
aged major, Occu. Business.
2. Avinash S/o Tukaramji Yawalkar,  
Partner M/s. Jai Ambe Developers,  
aged major, Occu. Business,  
Both R/o 182, New Subhedar Layout,  
Nagpur.

..Respondents.

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Shri C.F. Bhagwani, Advocate for the applicant / appellant.  
Shri A.M. Randive, Advocate for the respondents.  
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CORAM : Z.A. HAQ, J.

DATE : 21.8.2018.

CRIMINAL APPLICATION (APPA) NO.555/2018

Heard. For the reasons stated in the application and considering the facts of the case, applicant / appellant is granted leave to file and prosecute the appeal. Criminal application is **allowed** accordingly.

ORAL JUDGMENT IN CRIMINAL APPEAL NO.520/2018

1. Heard Shri C.F. Bhagwani, learned Advocate for the appellant and Shri A.M. Randive, learned Advocate for the respondents.

2. **ADMIT.**

Considering the nature of controversy and as record and proceedings are not required, the appeal is taken up for hearing.

3. The appellant takes exception to the order passed by the learned Magistrate by which the complaint filed by him under Section 138 of the Negotiable Instruments Act, 1881 is dismissed under Section 256 of the Code of Criminal Procedure. On 5<sup>th</sup> February, 2018 Advocate for complainant had filed an application (Exh. No.19) praying for an adjournment on the ground that the complainant was out of Nagpur for family rituals. The learned Magistrate rejected the application and dismissed the complaint on 5<sup>th</sup> February, 2018. The learned Magistrate has observed that the complainant was avoiding to lead evidence.

4. Though it cannot be said that the learned Magistrate has committed any error, considering the fact that the respondents have not been able to point out that the appellant has gained anything by delaying the disposal of complaint, the following order is passed to sub-serve the ends of justice:

- (i) The impugned order is set aside.
- (ii) The S.C.C. No.15161/2014 is restored on the file of 25<sup>th</sup> J.M.F.C. (Special Court for 138 N.I. Act), Nagpur.
- (iii) The learned Magistrate shall decide the complaint on merits according to law after giving opportunity to the parties.
- (iv) The appellant and the respondents shall appear before the learned Magistrate on 21<sup>st</sup> September, 2018 at 11 a.m. and abide by further orders in the matter.
- (v) The criminal appeal is **allowed** accordingly.

JUDGE

*Tambaskar.*