

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.773 OF 2018

IN

CRIMINAL APPEAL NO. 633 OF 2018

(NIKHIL HARISH JAIN...VS.. VIJU SOMASHEKHARAN NAIR & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms D.I. Charlewar, Advocate for Applicant/Appellant.
Shri P.V.Navlani, Advocate for Non-applicants/Respondents.

CORAM : Z.A.HAQ, J.

DATED : OCTOBER 09, 2018.

CRI.APPLN.NO. 773/2018.

The applicant/ appellant seeks leave to file appeal to challenge 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 in default and the non-applicants/respondents are acquitted.

Considering the facts of the case, leave is granted to the applicant/appellant to challenge the above referred order.

CRI.APPEAL NO. 633/2018.

Criminal Application No. 773/2018 was listed today. Order is passed on it today itself granting leave to the appellant to file and prosecute the appeal. Considering the facts of the case, the appeal is taken for further consideration.

Taken up for hearing on admission.

By order dated 20th March 2018 the learned Magistrate had directed the complainant to take steps necessary for facilitating the progress of the trial. As the complainant failed to take effective steps, the complaint is dismissed on 25th June 2018 recording that the complainant was continuously absent and though the complainant's advocate was present he had not taken any steps in the matter to facilitate the progress of the trial.

The learned advocate for the appellant has invited attention to the Roznama to point out that the complainant had been attending the trial.

Be that as it may, though it cannot be said that the learned Magistrate has committed an error of jurisdiction, in the facts of the case, I find that the appellant/ complainant has not gained anything by prolonging the matter. On the contrary, the delay in trial resulted in delay in grant of relief to the complainant himself.

In the facts of the case, in my view, the interests of justice would be sub-served by passing the following order:

- i) The impugned order is set aside.
- ii) Summary Criminal Case No. 6008 of 2017 is restored to the file of 28th Joint Civil Judge Junior Division and Judicial Magistrate First Class (Special Court for 138 Negotiable Instruments Act), Nagpur.

- iii) The learned Magistrate shall decide the complaint according to law, expeditiously.
- iv) The appellant and the respondent shall appear before the learned Magistrate on 30th November 2018 at 11.00 a.m. and abide by further orders in the matter.

The appeal is **allowed** in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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