

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

CRIMINAL APPLICATION (APPA) NO. 1918/2017
IN
MISC. CRIMINAL APPLICATION NO. 1917/2017

Sanjay Shivkant Upadhyay
..VS..
Ashok S/o Prabhakar Rao Kalyani

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

Court's or Judge's orders

Shri I.G. Meshram, Advocate for the applicant/appellant

CORAM : Z.A.HAQ, J.
DATED : 16/10/2018

Shri I.G. Meshram, Advocate whose name appears on the docket as the advocate representing the applicant/appellant requested for adjournment on the ground that the applicant/appellant who is an advocate will himself argue the matter. Shri I.G. Meshram, Advocate has submitted that his signature was obtained on the Vakalatnama and he is not having any papers and therefore he is not in position to assist the Court.

Considering the fact that the appeal is pending since 2013 and even leave to file appeal is not granted till date and the matter is lingering only at miscellaneous stage, I refused the request for adjournment. As Shri I.G. Meshram, Advocate submitted that he is not in position to assist the Court, I have gone through the matter on my own.

The applicant/appellant had filed a complaint under Section 138 of the Negotiable Instruments Act r/w

Section 420 of the Indian Penal Code against the non-applicant/respondent. This complaint is dismissed by the learned Magistrate by the order dated 28/09/2012 which reads as follows:-

“When called at about 1:40 pm. the complainant is absent. Perusal of record shows that till today the complainant could not secure the presence of the accused. It appears that no steps are taken for more than a year. Today also the complainant is absent. It appears that the complainant has lost interest in prosecuting the accused. Hence, following order.

- 1. The complaint is dismissed for want of prosecution.*
- 2. The accused is acquitted of the offence punishable u/s. 138 of the N.I. Act vide Section 256 (1) of Code of Criminal Procedure.”*

This order dated 28/09/2012 is challenged by the applicant/appellant by filing appeal before this Court. The order sheets are being reproduced which show the conduct of the applicant/appellant in prosecuting the matter:-

“On 15/04/2013:- Learned counsel for the applicant is absent. Bhatta is not paid. Copy for issuance of notice is also not supplied. Therefore, the application is dismissed for want of prosecution.

On 09/07/2013:- Learned Counsel for the applicant is absent. S.O. to 16-7-2013.

On 06/08/2013:- S.O. to 03/09/2013 to await service. None for the applicant.

On 23/09/2013:- At the request of the learned counsel for the appellant prays, three weeks time is granted.

On 22/10/2013:- At the request of the learned counsel for the applicant, three weeks time is granted to take steps.

On 26/11/2013:- Stand over to 10.12.2013 at the request of the learned Counsel for the applicant to take necessary steps.

On 18/12/2013:- Two weeks' time by way of last chance is granted to the learned Counsel for the applicant to remove office objections.

07/01/2014:- Upon request made by Mr. V.D. Kinge, learned counsel for the applicant, time up-till 15.1.2014 is granted for removal of office objections. Upon failure to make the compliance, the application shall stand dismissed without further reference to the Court. In event of compliance, list the matter on 16.1.2014.

16/01/2014:- As requested by the learned counsel for the applicant, time up till 23/01/2014 is granted for removal of office objection. In the event of non-compliance, the matter shall stand dismissed without further reference to the Court. In the event of compliance, list the matter on 29/01/2014.

On 28/08/2014:- None present for the applicant. S.O. to 15/09/2014.

On 15/09/2014:- None present for the applicant. S.O. to 06/10/2014.

On 15/11/2014:- None for the applicant. S.O. to 26/11/2014

On 26/11/2014:- None appears for the applicant. Put up for dismissal on 03/12/2014.

On 19/01/2015:- The order-sheet shows that on earlier date i.e. 26th November, 2014, none appeared for the applicant. The order passed by this Court on 26th November, 2014 reads thus:-

“None appears for the applicant. Put up for dismissal on 03/12/2014.”

Today also none appears for the applicant. To give last opportunity to the applicant, put up the application on 27th of January, 2015.

If none appears on the next date before this Court, the application would be dismissed.

On 10/02/2015:- As a last chance, two weeks' time is granted to the learned Counsel for the applicant to remove office objections.

On 27/02/2015:- None for the applicant. S.O. to 10/03/2015.

On 08/06/2015:- None present for applicant. S.O. for one week.

On 17/06/2015:- S.O. to 24/06/2015 at the request of Mr. I.G. Meshram, Advocate for applicant.

On 05/10/2015:- None appears for the applicant so also for the non-applicant. If learned counsel for the applicant fails to remain present before this on next date, this Court shall pass appropriate orders. Stand over after four weeks.

On 17/11/2015:- None present for applicant. Put up on 15/12/2015.

On 15/12/2015:- (None for both the parties.) Four weeks are granted to do the needful.

On 12/01/2015:- (None for the applicant.) Dismissed in default. In an application is made for restoration, the same shall not be accepted unless the applicant produces a receipt of payment of costs of Rs. 1,000/- [rupees one thousand only] to the High Court Legal Services Sub-Committee, Nagpur.

On 06/09/2016:- None for the applicant. Two weeks time granted to supply copy for issuance of notice to non-applicant.

On 25/11/2016:- None for the applicant. The applicant to provide correct address of the non-applicant. S.O. to 09.12.2016.

On 06/01/2017:- None for the applicant. Applicant to remove office objection within period of two weeks. Stand over to 20th of January, 2017.

On 12/04/2017:- None for the applicant. Applicant to remove office objections within period of one week, failing which

application shall stand disposed of as dismissed without further reference to the Court.”

It is writ large on record that there are no bonafides on the part of the applicant/appellant in prosecuting the matter. Considering the conduct of the applicant/appellant, it cannot be said that the learned Magistrate has committed any error by dismissing the complaint for want of prosecution.

I find that the applicant/appellant has not been able to give satisfactory explanation for the delay at every stage and for the negligence on his part in prosecuting the matter.

Hence, the criminal application (APPA) No. 1918/2017 is **dismissed**. Consequently, Criminal Application (APPP) No. 1917/2017 is rejected. Consequently, Criminal Application (APPP) Nos. 164/2015 and 775/2015 praying for grant of substitute service to the respondent by paper publication, Criminal Application (APPP) Nos. 696/2013 and 583/2014 praying for condonation of delay in filing the application for restoration of Criminal Application (APPA) No. 200/2013, Criminal Application (APPP) Nos. 695/2013, 154/2016 and 582/2014 praying for restoration of Criminal Application (APPA) No. 200/2013 and Criminal Application (APPA) No. 200/2013 praying for condonation of delay in filing the criminal appeal do not survive. They are also **disposed**.

JUDGE