

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 884 OF 2018**

M/s. Bharat Enterprises, through its Proprietor Bharat Parasmal Bafna	...Appellant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Kamlesh Jain I/b Mr. Rishi Bhuta for the Appellant

Mr. P. H. Gaikwad, A.P.P for the Respondent No.1-State

Mr. Rajesh Datar I/b Mr. Rahul O. Oak and Mr. Siddhesh S. Shetye for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 20th MARCH 2019

P.C. :

1 Heard learned counsel for the parties.

2 Admit. Learned A.P.P waives notice on behalf of respondent No.1-State. Mr. Datar waives notice on behalf of the respondent No. 2.

3 With the consent of the parties, appeal is taken up for final disposal, forthwith.

4 By this appeal, the appellant has impugned the order dated 19th November 2004 passed by the learned Metropolitan Magistrate, 70th Court, Amazon, Sewree, Mumbai, below Exhibit 1 in CC No. 537/SS/2013.

5 Learned counsel for the appellant submits that the appellant is the original complainant who had filed CC No. 537/SS/2013 in the Court of the learned Metropolitan Magistrate, 70th Court, Mazgaon, as against the respondent No. 2 for the alleged offence punishable under Section 138 of the Negotiable Instruments Act. He submits that the appellant's complaint was dismissed by the learned Magistrate as he failed to remain present on a few dates. He states that the appellant was unwell and hence, could not attend the proceedings. Learned counsel relied on the medical certificate which is annexed at Exhibit 'C' to the appeal memo. He submits that the dismissal of the appellant's complaint under Section 256 Code of Criminal Procedure was not justified in the peculiar facts of this case. He further states that the appellant is ready to proceed with the case on

merits and will not seek any adjournments before the learned Magistrate.

6 Learned counsel for the respondent No. 2 opposes the appeal. Learned counsel has filed an affidavit in reply of the respondent No. 2. He submits that the appellant had failed to attend to the criminal case filed by him consecutively on 6 dates and as such, the Magistrate was left with no alternative but to dismiss the case for want of prosecution. He further submits that no interference is warranted in the impugned order, inasmuch as, the appellant has not been diligent in attending to the case.

7 Perused the papers. It is not in dispute that the appellant-original complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, as against the respondent No. 2, in the 70th Court, Metropolitan Magistrate, Mazgaon; that after recording the appellant's verification statement, process was issued as against the respondent No. 2; that on 21st November 2013, the appellant filed his affidavit in lieu of examination-in-chief along with the documents;

and on 2nd December 2013, the cross-examination of the appellant commenced. It appears that subsequently, after part cross-examination of the appellant was conducted, the respondent No. 2 preferred an application seeking to conduct the trial through another advocate, however, the said application dated 2nd December 2013 was rejected by the trial Court vide order dated 2nd December 2013. The respondent No. 2 challenged the said order in this Court by filing Criminal Application No. 1202/2013. This Court, vide order dated 23rd December 2013, stayed the proceedings before the trial Court. It appears that subsequently, this Court allowed Criminal Application No. 1202/2012 vide order dated 2nd September 2014, and as such, the respondent No. 2 was permitted to engage another advocate. It appears that thereafter, the appellant was absent on 4 dates i.e. on 8th, 14th and 31st October and 14th November 2014 before the trial Court. According to the learned counsel for the appellant, the appellant was unaware that the stay was vacated by the High Court on 2nd September 2014. It appears that on 19th November 2014, the appellant filed an application seeking adjournment which was rejected, pursuant to which, the learned Judge passed the impugned order dated 19th

November 2004 dismissing the complaint for want of prosecution.

8 It appears that the appellant was diligently proceeding his criminal case, till the case was stayed by this Court. Having regard to the peculiar facts of this case, the appellant-complainant ought to be given an opportunity to proceed with his criminal case before the trial Court on merits. Accordingly, the impugned order dated 19th November 2014 passed by the Metropolitan Magistrate 70th Court, Mazgaon, Sewree, Mumbai, below Exhibit 1 in CC No. 537/SS/2013 is quashed and set-aside and the matter is remitted back to the trial Court for fresh consideration. Learned Magistrate to proceed with the case on its own merits in accordance with law. The statement made by the learned counsel for the appellant that the appellant will not seek any adjournment and will proceed with the case, is accepted. The respondent No. 2 and his advocate to also co-operate with the case. Since the case is of 2013, the same shall be disposed of expeditiously.

9 Appeal is allowed on the aforesaid terms and is disposed of accordingly.

10 All concerned to act on the authenticated copy of this
order.

REVATI MOHITE DERE, J.