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Pandit
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 522 OF 2019

Shri Sharad Dnyanoba Kharade

.... Applicant.

V/s

Shri Ratnakar Gopalkrishna Rao
and Anr.

..... Respondents.

Mr. Pavan S. Patil for the Applicant.

Ms. Rati Sinhasane i/b Mr. Umesh R. Mankapure for Respondent No.1.

Mr. A.R. Kapadnis, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 10, 2019

P.C.:-

1] The learned Magistrate on 15/2/2018 dismissed the complaint preferred by the Applicant for the offence punishable under Section 138 of the Negotiable Instruments Act. As a consequence of above, Respondent/Accused came to be acquitted under Section 256 of the Criminal Procedure Code.

2] The basis for dismissal of complaint was, from the date it was initiated and verification was recorded, Advocate for the Applicant has failed to take steps to effect service of process on the Respondent/Accused.

3] The submissions are, Applicant/Complainant has issued communication to his advocate who was appearing for the Applicant before the lower Court, depicting that though entire fees was paid, Advocate for the Applicant/Complainant failed to remain present before the Court. The learned Counsel for the Applicant submits that since the Accused has not appeared before the Court below, if the complaint is restored, no prejudice would be caused to the Accused and the Applicant can be put to reasonable terms.

4] The aforesaid submissions are opposed by the learned Counsel for Respondent No.1 on the ground that the Applicant and his Advocate remained absent since 2015. There is no reasonable cause which justifies such absence. That being so, dismissal of the application for grant of leave is sought.

5] Considered the submissions.

6] Fact remains that since the notice was not effected on Respondent/Accused, Respondent/Accused has no occasion to appear in the complaint proceedings. Apart from that, it appears that the lawyer of the Applicant/Complainant before the Court below has not taken steps to furnish copy of the complaint and pay court fees. Of course, to some extent, even Applicant needs to be blamed as he has not kept followup. Being complainant, he was required to personally remain present before the Court. Still in the interest of justice, in my opinion, a chance needs to be given to the Applicant.

7] In the aforesaid backdrop, order dated 15/2/2018 passed below Exhibit-1 in SCC No. 94 of 2015 is set aside, subject to payment of costs of Rs 10,000/- to be deposited by the Applicant before the Court of learned Magistrate. Deposit of costs is condition precedent.

8] Counsel for parties assure that parties shall appear before the learned Magistrate's Court on 13/01/2020 for expeditious disposal of the proceedings initiated by the present Applicant/Complainant. It

shall be open for the non-applicant to apply for withdrawal of the amount of Rs 10,000/- which this Court has directed the Applicant to deposit before the Court of learned Magistrate.

9] Application is allowed in the aforesaid terms and disposed of.

(NITIN W. SAMBRE, J.)