

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO.406 OF 2016

Rohidas Dyndeo Satpute] Applicant

Vs.

State of Maharashtra and Anr.] Respondents

.....
Mr. C.K. Tripathi, for the Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent No.1-State.

None for Respondent No.2.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 17TH DECEMBER, 2019.

P.C:

Despite service none present on behalf of the
contesting respondent i.e respondent No.2.

2. Heard Mr. Tripathi, learned Counsel for the applicant.

3. A complaint under section 138 of the Negotiable
Instrument Act had been filed by the applicant against the
respondent No.2-Popat Sahebrao Bhogade in the Court of J.M.F.C,
Pune. In short, it is the contention of the applicant that since the
respondent No.2 was in dire need of money, he approached the

applicant and the applicant, therefore, paid an amount of Rs.9,00,000/- as a hand loan. It is contended that the applicant is a Money Lender. Despite borrowing the amount, the respondent No.2 failed to repay the same and, therefore, a statutory notice came to be issued to the respondent No.2 which was duly served upon him.

4. The cheque issued by the respondent No.2 came to be dishonoured for want of sufficient funds and, therefore, the applicant approached the Magistrate's Court by filing a complaint under section 138 of the Negotiable Instruments Act.

5. The learned Magistrate by the impugned order dated 3rd October, 2016 dismissed the complaint in default and acquitted the respondent No.2 under section 256 of the Code of Criminal Procedure by observing, *inter alia*, that on earlier two dates, the applicant/complainant did not take steps and, therefore, the complaint came to be dismissed.

6. My attention is drawn by Mr. Tripathi, learned Counsel appearing for the applicant to the Roznama at Exhibit B colly which reveals that earlier to the date of dismissal of the

complaint on 3rd October, 2016, the applicant and respondent No.2 as well as their Counsel were absent on 30th August, 2016. However, before that date i.e on 20th July, 2016 though the complainant was absent, his Counsel was present. The impugned order, therefore, cannot be said to be a correct depiction of the facts.

7. Nevertheless, the applicant was very much present in the Court on the day when the impugned order was passed. It is clear from the record that the applicant had attended his another matter i.e S.C.C No.424550 of 2013 (Rohidas Dnyandev Satpute Vs. Kishor Ashok Yanbhas). It, therefore, follows that he was not absent but was busy in attending another matter and, therefore, could not attend the matter in question. However, the applicant ought to have made some arrangements to ensure that the matter in question is also attended to.

8. Be that as it may, the impugned order for the reasons aforesaid, needs to be set aside and the matter be adjudicated upon merits.

9. Consequently, following order is passed.

: ORDER :

- [1] The Application is granted.
- [2] The impugned order dated 3rd October, 2016 passed by the learned J.M.F.C, Pune in S.C.C No.35134 of 2008 is quashed and set aside.
- [3] Complaint bearing S.C.C No.35134 of 2008 stands restored to its original file.
- [4] The parties are directed to appear before the learned Judicial Magistrate First Class on 13th January, 2020 at 11.00 a.m.
- [5] The learned Magistrate shall proceed in accordance with law and shall try to expedite the matter.
- [6] The parties shall co-operate in disposing of the matter without seeking unnecessary adjournments.
- [7] Respondent No.2 shall furnish fresh P.R. bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned J.M.F.C, Pune.

The Application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]