

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

CRIMINAL APPLICATION (APPA) NO.708/2018

AND

CRIMINAL APPEAL NO.330/2019

Ramzan Khan s/o Kadar Khan Pathan

..VS..

Khadim Tours and Travels, thr. its Prop. Haji Amjad Khan and anr

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

Court's or Judge's Order

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Shri Anand Deshpande, Counsel for the Applicant.

CORAM : V.M.DESHPANDE, J.

DATED : APRIL 24, 2019.

1. Today, the present matter is listed before this Court with a note that writ issued for execution of Non Bailable Warrants against the non-applicants are awaited.
2. Heard learned counsel Shri Anand Deshpande for the applicant.
3. The present appeal is filed challenging order dated 26.10.2017 passed by learned Judge, constituted under Negotiable Instruments Act, Nagpur, whereby learned Judge below rejected Misc.Criminal Application No.3135/2014 filed on behalf of the applicant/complainant for condonation of delay in filing complaint for offence under Section 138 of the Negotiable Instruments Act.
4. After hearing learned counsel Shri Anand Deshpande for the applicant, in my view, even presence of the non-applicants is not at all necessary for deciding the

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present application. I recall order dated 4.4.2019 by which Non Bailable Warrants were issued against the non-applicants.

5. Firstly, a complaint was filed for offence under Section 138 of the Negotiable Instruments Act by the applicant/complainant and the said was registered as Summary Criminal Case No.11955/2014. Thereafter, the applicant/complainant filed an application under Section 143(b) of the Negotiable Instruments Act on 13.5.2014 and the said was registered separately as Misc.Criminal Application No.3135/2014. Notices on the said applications were issued. No step was taken by the applicant/complainant to serve the non-applicants. Not only that, the applicant/complainant remained continuously absent. Therefore, learned Judge below on 18.9.2017 was required to pass order directing the complainant to take appropriate steps. The impugned order shows that on the said day learned Judge below also observed that if the complainant fails to take necessary steps, further orders will be passed. In spite of that, no step was taken by the applicant/complainant. Thus, the case remained just pending without any step being taken by the applicant/complainant to prosecute the same. Consequently, learned Judge below found that complainant is not interested in prosecuting the case and, therefore, dismissed the misc. civil application for condonation of delay as well as the complaint. Against the said, the present criminal appeal is filed.

6. When the complaint and/or proceedings is filed by the litigant before the Court of law, it is onerous duty to prosecute the same diligently. The applicant cannot be dormant for years together as observed in the present case. Unless and until the non-applicants are served in the proceedings before the Court below, the said proceedings could not proceed further. Since it is a private complaint, it was duty of the applicant/complainant to take all necessary steps to serve the non-applicants.

7. It appears from conduct of the applicant/complainant that it is his luxurious litigation. The Courts are experiencing filing of unnecessary litigations since there are some type of litigants who want to forment their ego.

8. Unnecessary filing of complaints and/or after filing of complaints, no step is taken and, therefore, the Courts are unnecessarily burdened and learned Judge below is unable to devote time for the litigants who are diligently prosecuting their proceedings has to remain in queue. This type of attitude on the part of the litigants has to be curbed though it is the right of citizens to approach to the Court of law for redressal of their grievance, if any. At the same, time, it is the duty of such citizens to prosecute the remedy availed of diligently and should not allow proceedings to remain in a dormant state for years together.

9. During the course of hearing, learned counsel for the applicant could not offer any explanation as to why from 24.4.2014 the applicant could not take any step to

serve the non-applicants.

10. In that view of the matter learned Judge below, in my view, was right in dismissing the application and the complaint. No case is made out. Hence, the criminal application and the criminal appeal are dismissed with costs of Rs.5000/- to be deposited with the High Court Legal Services Sub Committee at Nagpur within a period of 6 weeks from today.

11. If the said amount is not deposited within the stipulated period, the Collector at Nagpur is directed to take appropriate steps to recover the said amount as arrears of land revenue from the applicant after observing due process of law and shall file report before this Court.

12. Since the complaint itself is dismissed and order dated 4.4.2019 is recalled, concerned police officer shall not execute Non Bailable Warrants issued against the non-applicants.

13. Learned Additional Public Prosecutor should take necessary steps by informing to the concerned police station not to execute the Non Bailable Warrants issued against the non-applicants.

14. Copy of this order be furnished to learned Additional Public Prosecutor Shri A.M.Johsi to be acted upon.

JUDGE

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