

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

CRIMINAL APPLICATION (APPA) NO. 709 OF 2019
IN
CRIMINAL APPEAL NO. OF 2019

(Bhaskar S/o Vithobaji Atkari Vs. Gopal S/o Narayandasl Ochani)

WITH
CRIMINAL APPLICATION (APPA) NO. 707 OF 2019
IN
CRIMINAL APPEAL NO. OF 2019

(Bhaskar S/o Vithobaji Atkari Vs. Sau. Neha Gopal Ochani)

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

Court's or Judge's orders.

CORAM : S.M. MODAK, J.
DATE : 08th NOVEMBER, 2019.

These appeals are connected appeals though the appellant has removed the objection, they are not listed today. It is submitted that complainant in these matters is the same and the order passed in them are by the same Court, on the same date and for the same reason. These appeals be called and be listed today.

2. It is usual phenomena in bigger districts to transfer the cases from one Court to another Court. There are various reasons for such transfer of cases. One reason is creation of new Court. Another reason is abandonment of

existing Court.

3. Causing inconvenience to litigants out of such transfer is quite natural. Because even though transfer order is published on the notice board, it may not be always possible for litigant to take note of it. So many a time litigant came to know about the transfer when he attends the earlier Court. Many a time it takes time to search out the new court also. During this period, the cases are listed before a new Court. The litigant did not appear before such Courts, the Judge presiding over a new Court as per law on some occasion was compelled to pass order against the complainant and on another occasion against the accused too.

4. In this case, there was a occasion for 19th Jt. Civil Judge Junior Division & Judicial Magistrate First Class, Nagpur to dismiss the complaint by acquitting the accused for the offence punishable under Section 138 of Negotiable Instruments Act. It was passed on 13th May, 2019 in SCC 3418 of 2016 & SCC 3417 of 2016.

5. On the same date other two cases of the same complainant were also listed, though the accused was different and learned Magistrate passed similar order. I have perused it. The complainant has filed affidavit of examination in chief. Direction was given earlier on 30th March, 2019 to adduce the evidence. On adjourned date i.e on 13th May, 2019, the complainant could not remain present in time. He appeared before that Court after passing of the

impugned order and his presence is marked in the Rojnama dated 13th May, 2019.

6. It is this order which is challenged by the original complainant. He is seeking leave to prefer an appeal under the provisions of Section 378(4) of Code of Criminal procedure. On considering the nature of controversy involved, I am inclined to grant leave. I feel that even without issuing notice to respondent-accused, leave can be granted. The accused can be heard later on. Because it is a common experience that even at the stage of granting of leave, the cases remain pending. This Court has experienced that appeals are pending for the last 12 years even in cases wherein power under Section 256 of Code of Criminal Procedure is exercised. In this case also learned Magistrate has exercised the power so what I feel is that the time can be saved by granting leave and the accused can be heard subsequently. Hence, the order.

ORDER

- i. Leave is granted to prefer an appeal.
- ii. Appeal is admitted.
- iii. Issue notice to respondent/accused, returnable after three weeks.
- iv. Criminal Application is disposed of.

JUDGE