

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

CRIMINAL WRIT PETITION NO.878/2019

Rizwan Samsher Khan

..VS..

The State of Mah., thr. PSO PS Arni, Taluka Arni, District Yavatmal 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 R.J.Shinde, Counsel for the Petitioner.
Shri J.Y.Ghurde, Addl.P.P. for Respondent No.1/State.

CORAM : V.M.DESHPANDE, J.

DATED : OCTOBER 01, 2019.

1. Heard learned counsel Shri R.J.Shinde for the petitioner and learned Additional Public Prosecutor Shri J.Y.Ghurde for respondent No.1/State though the State is a formal party.
2. Respondent No.2/complainant-Shabbir Wazir Malnas, filed a complaint against the present petitioner for offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The said complaint was registered as Summary Criminal Case No.483/2016. The petitioner appeared in the said case and obtained bail. When the said complaint case was fixed for evidence on 20.1.2018, respondent No.2/complainant-Shabbir and his counsel were not present and also application for adjournment was not filed, however learned Magistrate adjourned the matter and fixed the case on 30.1.2018 for evidence. On the said day, the

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petitioner filed an application (Exhibit 22) for dismissing the complaint in default and for discharging him. On 30.1.2018, learned Magistrate rejected the application (Exhibit 22) on the ground that charge was already framed in the matter.

3. The petitioner preferred a revision before Revisional Court and learned Judge of Revisional Court in Criminal Revision No.3/2018 delivered judgment on 18.7.2019 and dismissed the criminal revision filed on behalf of the petitioner.

4. Perusal of the impugned judgment reveals that only on 20.1.2018 respondent No.2/complainant-Shabbir Wazir Malnas and his counsel were absent. No doubt true that on the said day, though the application for discharge was not moved, however that does not debar or absolve learned Magistrate to exercise discretion by adjourning the matter and accordingly learned Magistrate fixed the case for evidence on 30.1.2018.

5. It is to be noted that on 30.1.2018, respondent No.2/complainant-Shabbir Wazir Malnas filed an application (Exhibit 23) before learned Magistrate and explained facts as to why on 20.1.2018 he and his counsel were absent. The said was considered by learned Magistrate and the application was allowed. Before learned Judge of the Revisional Court, application (Exhibit 9) was filed by the petitioner for production of documents i.e. certified copy of complaint i.e. SCC No.777/2016 which was filed by another complainant Abdul Kadar. In the said matter, it was shown that on 5 occasions the said

complainant was absent and, therefore, learned Magistrate dismissed the said complaint on 14.6.2019. While dismissing the criminal revision in question, learned Judge of the Revisional Court supplemented cogent reasons as it could be seen from paragraph No.14 on words of the impugned judgment.

6. In this view of the matter, no case is made out warranting any interference from this Court in the impugned judgment and order. Hence, the criminal writ petition is dismissed and disposed of accordingly.

JUDGE

!! BRW !!

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