

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

CRIMINAL APPLICATION (APPA) NO. 624 OF 2018

Manakchand s/o Jethamal Maloo

..vs..

Sarath Engineering and Construction Pvt. Ltd. And ors.

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

Court's or Judge's orders

Shri M.P. Khajanchi, Advocate for appellant.

CORAM : VINAY JOSHI, J.

DATED : 08/01/2020.

Heard.

2. Being aggrieved and dissatisfied by the order of dismissal of private complaint, for want of prosecution in terms of Section 256 of Code of Criminal Procedure, this appeal came to be filed.

3. Initially, the appellant has filed the private complaint alleging dishonor of cheque to the tune of Rs.21,00,000/-. It is contended that despite service of statutory demand notice, payment is not forthcoming, hence, Criminal Complaint was filed. The impugned order dated 19.05.2018 discloses that learned Magistrate has dismissed the complaint by noting long standing absence of complainant as no steps were taken from 19.10.2016 onwards. Learned Counsel for the appellant, took me through the copies of Roznama. Particularly, I have gone through the copy of Roznama from 19.10.2016 onwards to find out whether there are any lapses on the part of the complainant.

4. The Roznama dated 19.10.2016 indicates that the matter was adjourned for returning of process. Thereafter, on the same stage, the matter was adjourned on 30.12.2016, 20.01.2017, 18.03.2017, 18.04.2017, 16.05.2017 and 19.06.2017. Thereafter, on 12.04.2018, the matter was first time kept for taking steps and adjourned to 19.05.2018, but on that day, it came to be dismissed. A bare perusal of record indicates that for considerable period of two years, the matter was for returning of process, meaning thereby complainant has no role during the said period. The matter is only kept first time for steps on 19.05.2018 by Roznama dated 12.04.2018, however, on that day, it came to be dismissed.

5. The respondents were duly served as per the report and Pursis dated 16.12.2019 filed by the Assistant Government Pleader. Inasmuch as, it is a matter of record from the Roznama that there was no inaction on the part of the complainant. The learned Magistrate ought to have directed the complainant to take steps by passing an order with indication that on its failure, matter will be dismissed. The learned Magistrate erred in dismissing complaint without giving proper opportunity. The said order is not sustainable in the eyes of law. Considering all these circumstances, this matter can be disposed at this stage itself, by granting leave.

6. In view of that leave is granted. Criminal Appeal be registered for technical purpose and it stands

allowed. The impugned order dated 19.05.2018 is hereby set aside. The Criminal Complaint bearing S.C.C. No. 426 of 2013 is restored at the same stage. The appellant shall appear before the learned Magistrate on 01.02.2020 and on the very date take requisite steps and to take follow up action for service on respondent as and when required.

7. Appeal stands disposed of accordingly.

JUDGE

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