

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

Criminal Appeal No.824 of 2019

Javed Sheikh s/o Rafia Sheikh Qureshi
 vs.
Ramesh s/o Arunrao Rode & another

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

Court's or Judge's Orders

*Shri J.J. Ujawane, Advocate h/f Shri Deoul Pathak, Advocate
 for the Appellant.*

Shri M.V. Rai, Advocate for Respondent No.1.

Mrs. Geeta Tiwari,, A.P.P. for Respondent No.2.

CORAM : S.M. MODAK, J.

DATE : 12th MARCH, 2020.

Though the order dated 26/02/2020 does not specifically speak about grant of leave, both the sides were heard on that date in the proceedings of criminal appeal. Today, I have heard the learned Advocates for the parties.

02] The only issue involved in this appeal is, Whether the learned Magistrate has exercised the powers under Section 256 of the Code of Criminal Procedure properly? Criminal Complaint No.870/2016 was filed by the present appellant against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The plea was recorded on 14/11/2017 and then the case is fixed for giving of evidence on behalf of the complainant. From 26/12/2017 till the time the criminal complaint was dismissed on 05/07/2018, the complainant has not given any evidence. The respondent-accused is kind

enough to file copy of Roznama. I have perused it with the help of both the learned Advocates for the parties.

03] There are in all seven dates in between 26/12/2017 till 05/07/2018. On certain occasions, the complainant was not present, whereas on other occasions, though he was present, but he has not given evidence-affidavit. On certain occasions, even the accused was not present, the complainant claims that he was ill and could not attend the matter. The complainant claims that he could not give evidence because he took time for collecting the documents for giving the evidence.

04] This is not a case of absolute negligence on the part of the complainant. Though, he has not given evidence, he has attended the matter except on some occasions. It is true that on all these dates, the complainant has remained present on majority of the dates. The learned Magistrate was vigilant enough in imposing costs of Rs.300/- on the complainant on 25/06/2018. It is true that there is a mandate to dispose of such cases within six months. Probably, the learned Magistrate must have that mandate in his mind.

05] As said above, this is not a case of absolute negligence. So, what I feel is that the learned Magistrate ought to have given some more time to the complainant to give evidence. The order requires interference. I am inclined to set aside the said order.

There needs to be some time limit fixed. Hence, I pass the following order :

ORDER

- i. The appeal is allowed.
- ii. The impugned order, dated 05/07/2018 passed by the Judicial Magistrate First Class, Bhandara in Criminal Complaint Case No.870/2016 is set aside.
- iii. The complaint be restored to file subject to payment of costs of Rs.2,000/- (Rupees Two Thousand Only) to be paid to the respondent-accused.
- iv. Both the parties are directed to appear before the learned Magistrate on 31st March, 2020 and no fresh notice will be issued.
- v. The complainant is directed to complete his evidence including his witnesses within three months from that date.
- vi. Accused is given two months' time thereafter to complete his evidence, if he wants.
- vii. Thereafter, the learned Magistrate is at liberty to dispose of the case as per its merits.
- viii. The appeal is disposed of in the above terms.

JUDGE