

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 21 OF 2020

ARUP KUMAR DAS

.... APPELLANT

Versus

OM FREIGHT FORWARDERS PVT.
LTD. AND 4 OTHERS

.... RESPONDENTS

Mr. Mahesh Amonkar, Additional Public Prosecutor for the
Applicant.

Coram:- M.S. JAWALKAR, J.

Date:- 9th February, 2021

ORAL ORDER:

Heard Mr. Mahesh Amonkar, None for the
respondents.

2. The present consolidated application is filed for
leave to appeal along with criminal appeal. The Appeal is
directed against the order dated 08.07.2019 passed by the
Judicial Magistrate First Class at Vasco, Goa in Criminal Case
No. 3130/AOA/DWA/2018/B.

3. The appellant herein was the complainant and the
respondents were the accused. Accused no. 1 is a firm, M/s
Om Freight Forwarders Private Limited, Mormugao, which

was carrying on work of loading of steel coils in the South West Port Limited. Accused no. 3 is the firm by name M/s Tomar Logistics, which was carrying on transportation of steel coils by trailers. Accused nos. 2 and 4 were looking after the business of accused nos. 1 and 3 respectively. As such, persons responsible for “dock work”.

4. The appellant filed complaint before the JMFC against accused nos. 1 to 4 for committing the offence punishable under Section 14(2)(a) of the Dock Workers (Safety, Health & Welfare) Act, 1986 (Act, for short) and for breach of regulations 107(1) and 117 read with Regulation 7(4)(b) and Regulation 111(1) read with Regulation 7(11) of the Dock Workers (Safety, Health & Welfare) Regulations, 1990 (Regulations, for short) and against accused no. 5 for offence punishable under Section 14(3) of the said Act and for breach of Section 11(1)(b) of the said Act read with Regulation 57(8)(b) of the said Regulations.

5. It appears that the learned JMFC by impugned order dated 08.07.2019 dismissed the complaint filed by the

complainant, A.K. Das, who is the Assistant Director (Safety), Inspectorate Dock Safety (IDS), Mormugao Port Trust on the ground that despite giving several opportunities, the complainant failed to plead the matter.

6. It appears that for want of time, matter was adjourned earlier in the month of April, 2019 when complainant and his Advocate were present, however, for want of time matter was further fixed on 03.06.2019. As the matter was fixed after summer vacation, the complainant's Advocate lost track of the said matter and the complainant was also out of station for his official duty and the matter was fixed on 28.06.2019. On 28.06.2019, complainant and his Advocate were absent and the matter was fixed on 08.07.2019. On 08.07.2019, the learned Trial Court was pleased to dismiss the complaint on the ground that inspite giving several opportunities, the complainant failed to plead the matter and thereby acquitted the accused. It appears that the Trial Court only gave two opportunities and that cannot be said to be several opportunities. The applicant is the public authority of the central government and therefore,

sufficient opportunities have to be given to the complaint to establish the complaint. In connected Appeal, it appears that the order of the learned JMFC is set aside. In the present matter, after issuance of notice, reply is filed by respondent nos. 1 and 2, opposing the application, however, nobody was present when the matter was listed for arguments on the application.

7. In the interest of justice and considering the facts and circumstances, the impugned order needs to be quashed and set aside, and accordingly, it is quashed and set aside. The complaint shall be restored to the file of the JMFC under the same number. The complainant shall appear before the Magistrate's Court on 08.03.2021 at 10:30 a.m. The Magistrate shall proceed with the complaint in accordance with law.

8. The Criminal Appeal is disposed off in the aforesaid terms.

M.S. JAWALKAR, J.

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