

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1803 OF 2019

Kotak Mahindra Bank Ltd.

.... Applicant.

Vs.

State of Maharashtra and Ors.

.... Respondents.

Mr.Faisal Sayyed i/b. M/s. Manilal Kher Ambalal & Co. for the Applicant.

Smt. Rutuja Ambekar, APP for the Respondent No.1-State.

Mr. Niranjan Mundargi a/w Ms. Akshata Timmapur i/b. M/s. The Law Point
for Respondent Nos.3 to 15.

CORAM : A. S. GADKARI, J.

DATE : 24th MARCH, 2021.**P.C.:-**

1. By the present Application under Section 482 of the Criminal Procedure Code (for short, "*Cr.PC.*"), the applicant/original complainant in CC No.6437/SS/2015 pending on the file of learned Metropolitan Magistrate, 63rd Court at Andheri, Mumbai has impugned Orders dated 1st December 2018, passed below Exh.83, rejecting its Application for adjournment and dated 2nd November 2019, passed below Exh.85, rejecting Application for recalling of Order dated 1st December 2018.

2. Heard Mr. Sayyed, learned counsel for the applicant, Smt. Ambekar, learned A.P.P. for the respondent No.1-State and Mr. Mundargi, learned counsel for the respondent Nos.3 to 15.

3. Perusal of impugned Order dated 1st December 2018 would indicate that, the Trial Court has observed that, since 24th April 2018, the

complaint is pending for further cross-examination of complainant. That, no good cause was shown for granting adjournment and therefore the said Application came to be rejected. The Trial Court has also directed that, no further evidence of complainant would be recorded. The Trial Court thereafter posted the proceedings of the said complaint for recording statement of accused under Section 313 of Cr.PC.

The record indicates that, on 19th January 2019, the applicant filed an Application for recalling of the said Order dated 1st December 2018 passed below Exh-83. The Trial Court by its Order dated 2nd November 2019 passed below Exh.85 has rejected the said Application.

4. Mr. Mundargi, learned counsel for the respondent Nos.3 to 15 has no serious opposition for allowing the present Application.

5. Perusal of roznama reproduced in the said Application dated 19th January 2019 indicates that, the Advocate of complainant or complainant's witness was regularly present before the Trial Court and it is only on 4th October 2018 and 1st December 2018 adjournments were sought by him. It also appears from the perusal of roznama that, the Advocate for accused had also sought adjournments on many occasions. In view thereof, it would not be appropriate to put entire blame on the applicant for delaying the trial of the said complaint.

6. Be that as it may. However, to have a fair trial and in the interest of justice, recording of evidence of complainant and its witnesses is

necessary for proper adjudication of the complaint.

The impugned Orders dated 1st December 2018 and 2nd November 2019 are accordingly set aside, subject to condition that, the applicant shall pay a cost of Rs.25,000/- (Rs.Twenty Five Thousand Only) to the High Court Legal Services Committee, Mumbai. The said cost be deposited with High Court Legal Services Committee having its account namely "High Court Legal Aid Fund", Account No. 60045304283, IFSC-MAHB0000002 of the Bank of Maharashtra, Branch-Fort, Mumbai-400032, maintained by the High Court Legal Services Committee, Mumbai, Room No. 105, 1st Floor, PWD Building, High Court, Mumbai and to furnish the details of such cost to the High Court Legal Services Committee, Mumbai and obtain the receipt thereof physically or through Email i.e. hclsc.mumbai@gmail.com which shall be the proof of such payment/deposit. The cost be deposited within a period of four weeks from today.

7. Subject to payment of aforesaid cost, the impugned Order dated 1st December 2018 passed below Exh.83 and Order dated 2nd November 2019 passed below Exh.85, are set aside and the applicant is permitted to lead evidence of its witnesses.

8. Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)