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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.474 OF 2005**

M/s. J. K. Industries Ltd. ... Appellant

Vs.

Anil Kagale & Ors. ... Respondents

Mr. Anjal Amin i/b B. Amin & Company for the Appellant.

Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 5TH DECEMBER 2022.

PC:-

1. Heard learned Advocate Mr. Anjal Amin for the Appellant-Complainant and learned APP Mr. H. J. Dedhia for the Respondent-State.

2. Leave to prefer an Appeal is granted by this Court on 20th July 2006 in Criminal Application No.4951 of 2004. At that time learned Advocate Mr. Siddharth Karpe appeared for Respondent Nos.1 to 3. A copy of the said order is shown to me. It is taken on record and marked as Annexure "X".

3. On the last occasion the Appellant was directed to serve learned Advocate for Respondent Nos.1 to 3. A copy of letter dated 1st December 2022 to that effect is taken on record and marked as

Annexure “B”. Learned Advocate Mr. Karpe wrote the endorsement “He is not concerned with the Respondents and the Appellant may serve them directly”. It is to be seen that earlier learned Advocate Mr. Karpe has filed Vakalatnama, hence, there is no need to serve the Respondents.

4. Learned Advocate for the Appellant took me through various orders passed by learned Magistrate which is at page 16. The learned Magistrate, Kolhapur, dismissed the complaint vide order dated 4th March 2022. It is challenged herein. For want appearance of the complainant before the trial Court, the complaint was dismissed and accused was discharged. The trial Court has already abated the case against accused No.1–Anil Kagale vide order dated 10th July 2000. After 10th July 2000, the matter was adjourned to 20th February 2002 and lastly, on 4th March 2002.

5. The trial Court has said that the matter is old and the complainant is not interested. This reason is not correct. It is for the reason that the complaint was filed under section 138 of the Negotiable Instrument Act. After appearance of the accused persons, the Court is required to record their plea and then stage of complainant of giving evidence will arise. On the date of dismissal i.e. 4th March 2002, the trial Court ought to have recorded plea of accused instead of that complaint was dismissed for absence of the complainant.

6. My attention is also invited to the order dated 4th May 2009. By the said order, learned Single Judge of this Court has clubbed

Criminal Application No.4953 of 2004 along with present Appeal. It is submitted that Criminal Application No.4953 of 2004 was filed for grant of leave to prefer the Appeal against order of dismissal by the trial Court in another case. Grievance is that if both matters are clubbed then they need to be decided together whereas learned Single Judge as per order dated 29th June 2009, has set aside order in another case, however, due to oversight this case remained pending.

7. In view of above, this Appeal needs to be allowed. Hence, the following order is passed :

O R D E R

- (a) Appeal is allowed and the order dated 4th March 2002, passed by the learned Judicial Magistrate First Class, Kolhapur in Criminal Case No.19365 of 1998 is set aside and the complaint is restored to file.
- (b) The Appellant is directed to deposit cost of Rs.1,000/- each to be paid to Respondent Nos.2 to 4. The said cost be deposited with the learned Magistrate, Kolhapur within a period of 10 days from today. The learned Magistrate, Kolhapur shall pay the said cost of Rs.1,000/- each to Respondent Nos.2 to 4.
- (c) The Appellant is directed to appear before the Judicial Magistrate First Class , Kolhapur on 12th December 2022.
- (d) The learned Judicial Magistrate, First Class, Kolhapur is directed to issue summons to accused nos.2 to 4 and to record their plea.
- (e) The complainant is directed to complete his evidence within a period of two months, after plea is recorded.

- (f) Accused Nos.2 to 4 are at liberty to adduce evidence if they desire and to complete it within two months thereafter and learned Magistrate is directed to dispose of the case thereafter within a period of three months.
 - (g) The learned Magistrate is directed to regulate conduct of the parties. The parties who are delaying the matter be imposed exemplary cost of Rs.5,000/- if adjournment is sought without any justifiable reason.
8. Criminal Appeal is disposed of accordingly.

(S. M. MODAK, J.)