

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 471/2019

Akhilesh Harishchandra Chaudhary ..Versus...Mohd. Kasim Abdul Sattar Pathan

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

Court's or Judge's orders

Mr. N.L.Jaishwal, Advocate for appellant.
None for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 27/06/2022

1] Heard Mr. Jaiswal, learned counsel for the appellant.

2] None appears for Respondent sole though served, which leaves me no choice than to proceed ahead for decision.

3] The present appeal challenges the order dated 18.8.2018 passed by the Special Court under Section 138 of the N.I.Act, whereby the complaint filed by the appellant came to be dismissed by acquitting the accused on account the complainant not taking effective and necessary steps.

4] The complaint was filed on 30.11.2015, whereby summons came to be issued to Non-Applicant/accused by order dated 5.8.16. An application at Exh. 5 came to be filed by the complainant to serve the accused respondent by RPAD. Thereafter the matter was pending for receipt of the service

report, as is indicated by the order sheet. The order sheet dated 18.7.2018 also indicates that the matter was posted for awaiting summons to 18.8.2018, on which date under the mistaken impression that the matter was posted for steps which were not taken, by the impugned order the complaint has been dismissed and accused is acquitted. Since the roznama indicates that on 18.7.2018, the matter was listed for await summons, and was posted on 18.8.2018, it is apparent that the stage could not have been changed on 18.8.2018 and therefore, the date 18.8.2018 could not have been considered by the learned Magistrate to be a date on which steps were required to be taken by the complainant, in view of which the impugned order cannot be sustained. The same is hereby quashed and set aside and the matter is remitted back to the learned Special Court for proceeding further and deciding the matter as per law.

5] R&P be sent back to the Special Court.

6] Appeal is accordingly allowed in above terms. No costs.

Rvjalit

JUDGE

Digitally sign byRAJESH
VASANTRAO JALIT
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Signing Date:28.06.2022 16:40