

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL APPEAL NO.127 OF 2022(FILING)
WITH
CRIMINAL MISCELLANEOUS APPLICATION NO.66
OF 2022**

CRIMINAL APPEAL NO.127 OF 2022(FILING)

Sanjay Enterprises rep. by its **... Appellant.**
Partner Sanjay Popat

Versus

Mohammed Bhai. **.... Respondent.**

**WITH
CRIMINAL MISCELLANEOUS APPLICATION NO.66 OF
2022**

Sanjay Enterprises rep. by its **... Applicant**
Partner Sanjay Popat

Versus

Mohammed Bhai. **.... Respondent.**

Mr Jatin Ramaiya, Advocate for the Applicant.

Ms Swati Kamat Wagh, Advocate for the Respondent.

**CORAM:
DATED:**

**PRAKASH D. NAIK, J
6th NOVEMBER 2023**

ORDER:

1. The appellant is the original complainant in Criminal Case
No. OA/183/2011/A in Criminal Complaint

No.183/OA/NI/2011/I filed in the Court of JMFC, Margao. The respondent was impleaded as accused in the said complaint.

2. The complaint related to cheque issued by the accused amounting to Rs.41,500/- dated 15.09.2011 in his capacity as proprietor of Fatima Tours And Travels. The cheque was dishonoured for insufficient funds. Complaint was filed on 26.12.2011.

3. The authorised representative of the appellant deposed before the learned Magistrate. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. The learned Magistrate vide order dated 25.11.2021 dismissed the complaint for default and acquitted the accused. The appeal has been preferred challenging order dated 25.11.2021.

4. Learned Advocate for the applicant submitted that the complaint out not to have been dismissed by the learned Magistrate. The applicant was following the proceedings since 2011. The order was passed in mechanical manner. The Court failed to take into consideration whether the presence of the appellant was essential on that particular date for the progress of the case.

5. Learned advocate for the respondent submitted that the complainant remained absent before the trial Court on 25.11.2021. On the previous date of hearing also the complainant was absent. The roznama indicate that the

complainant was absent on 07.10.2021. On 18.09.2021 the complainant was absent. Even on 28.08.2021 the complainant was absent. The learned Magistrate was constrained to dismiss the complaint.

6. It is pertinent to note that the complaint was filed in the year 2011. The complainant has been pursuing the proceedings. The evidence of representative of the complainant was recorded. Cross-examination was recorded. On 25.11.2021 the complainant was absent. Even accused was absent. On 07.10.2021 both were absent. On 18.09.2021 the accused and complainant were absent. On 28.08.2021 both were absent. Exemption application preferred by the accused was granted.

7. Considering these circumstances, the impugned order will have to be set aside. The dismissal of complaint under Section 256 of Cr.P.C. has resulted in acquittal of the accused which is evident from the roznama dated 25.11.2021. The application for leave to file appeal is required to be allowed.

ORDER

(i) Criminal Miscellaneous Application No.66 of 2022 is allowed granting leave to appeal against the impugned order dated 25.11.2021.

(ii) Criminal Appeal No.127/2023(Filing) is allowed.

(iii) The order dated 25.11.2021 passed by learned JMFC, Margao in Criminal Complaint No.183/OA/NL.2011/I

dismissing the complaint and acquitting the accused is set aside.

(iv) The complaint no. 183/OA/NI/2011/I is restored to file.

(v) Appellant/applicant shall pay cost of Rs.2000/- to the respondent-complainant within a period of four weeks.

(vi) The hearing of the proceedings in Criminal Complaint No.183/OA/NI/2011/I are expedited.

(vii) Parties shall appear before the trial Court on 05.12.2023.

(viii) The learned Magistrate shall proceed with the case in accordance with law.

(ix) Criminal Miscellaneous Application No.66 of 2022 and Criminal Appeal No.127/2022(Filing) stand disposed of.

(PRAKASH D. NAIK, J.)