

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Application No.169 of 2020

**Housing Development Finance
Corporation Ltd.**

.... Applicant.

Vs.

Hemant Mohan Agarwal & Anr.

.... Respondents.

CHITRA
SANJAY
SONAWANE

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Mr Ramakant Yadav, Advocate i/b RHY Juris Law Associates for applicant.

Mr AR Kapadnis, APP for State.

Mr Shubham Mhatre for Respondent No.1.

Coram: R.N.Laddha, J.

Date : 12 October,2023.

P.C.:

Heard Mr Ramakant Yadav, the learned Counsel for the applicant; Mr Shubham Mhatre, the learned Counsel appearing on behalf of the first respondent; and Mr AR Kapadnis, learned APP for the respondent/State.

2. The Applicant before this Court was the original complainant in CC No.11312/SS/2017, which was pending before the learned Magistrate, 33rd Court, Ballard Pier, Mumbai, under Section 138 of the Negotiable Instruments Act, 1981.

3. Being aggrieved with the order of issuance of process dated 15.2.2018 and also the order of issuance of bailable warrant dated 6.4.2018, the respondent No.1 had approached this Court by way of Criminal Application bearing No.538 of 2018. This Court by an order dated 4.10.2019, allowed the application by setting aside and quashing the process issued against respondent No.1 but has given liberty to the applicant to move before the trial Court for appropriate relief with application under Section 14 of the Limitation Act.

4. Mr Ramakant Yadav learned Counsel appearing on behalf of the applicant submitted that the complaint bearing CC No.11312/SS/2017 was listed before the learned Magistrate on 14.10.2019 but the Court was on leave. Hence the matter was adjourned 4.11.2019. However, the learned Magistrate on 24.10.2019, before the fixed date, passed the impugned order and disposed of the complaint. He submitted that the learned Magistrate has passed the impugned order mechanically without considering the observations made in the order (paragraph 14 and 15) dated 4.10.2019 in Criminal Application No.538 of 2018. He made a grievance that the impugned order is a non speaking and without application of mind.

5. Mr Shubham Mhatre, learned Counsel appearing for the first respondent submitted that bare perusal of the complaint which is filed before the learned Magistrate reveals that the company has not been made an accused nor the Court has issued process against the company. According to him, the complaint has not satisfied the basic ingredients of Section 138 of NI Act while taking cognizance of the complaint.

6. Upon perusal of the records, the impugned order dated 24.10.2019 passed by learned Metropolitan Magistrate is a cryptic. The learned Magistrate needs to demonstrate such application of mind by giving detailed reasons pointing to the observations made in the order of this Court dated 4.10.2019 passed in Criminal Application 538 of 2018.

7. In view of this, the impugned order dated 24.10.2019 passed by the learned Magistrate is quashed and set aside, and the learned Magistrate is directed to pass an order afresh taking into consideration the observations made in the order of this Court in Criminal Application No.538 of 2018. The petition as such stands disposed of. It is made clear that this Court has not examined the merits of the case.

[R.N. Laddha, J.]