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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.24 OF 2021
WITH
CRIMINAL APPLICATION NO.25 OF 2021
WITH
CRIMINAL APPLICATION NO.26 OF 2021**

Kappa Infra Ventures Pvt. Ltd. & Anr. ... Applicants
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Amit Ashok Gharte for the Applicants.
Mr. N. B. Patil APP for Respondent No.1-State.

CORAM : S. M. MODAK, J.

DATED : 1ST MARCH 2023

PC:-

1. Heard learned Advocate for the Applicant-complainant. There is affidavit of service particularly serving Respondent Nos.1 and 2. The track consignment reports are annexed. One envelope is served whereas other envelope is not served. The Respondents are husband and wife and residing in one flat. So service is presumed to be completed.

2. The three complaints filed before the Court of Judicial Magistrate, First Class, Pune were dismissed by separate orders passed on 27th December 2019. The cases under section 138 of NI Act were of the year 2015. In fact, the impugned orders were passed for not

taking steps by the Applicants. Earlier to passing of the orders, learned Magistrate has warned the complainant by passing the order on 14th August 2018.

3. My attention is invited to para 3 of the Application filed for restoration of the complaint on 30th December 2019. It says that on the date of dismissal i.e. 27th December 2019, though learned Advocate on record for the complainant was not there, another Advocate for the complainant company was present and he had shown willingness to file Application for taking necessary steps, however, it was not considered.

4. The explanation is offered that Respondent No.2-accused could not be served for want of new address. However, new address was found subsequently. Considering these facts learned Magistrate ought to have granted some time to the complainant on 27th December 2019, however, it was not granted. Hence, case for grant of special leave is made out. Special leave is granted.

5. Appeal is admitted.

6. Considering the limited controversy, the Appeal is taken up for final hearing. As stated above, learned Magistrate ought to have granted chance to take steps on 27th December 2019. No doubt it is true that the complaint under section 138 of NI Act needs to be disposed of as early as possible. The power of Magistrate under section 256 of CrPC is not disputed. However, when some one from the complainant had shown readiness to take steps, learned

Magistrate should have allowed it by imposing costs. The dismissal is last resort.

7. In the complaint there are different addresses for the Respondents, whereas in the Appeal memo there are different addresses. These addresses were not placed before the trial Court. Now, the Appellant is ready to serve them on fresh addresses. They need to be given an opportunity. In fact, this endeavour should have been done earlier to trace out new addresses. Hence, subject to costs, the following order is passed :

ORDER

- (a) Appeal is allowed.
- (b) The orders dated 27th December 2019, separately passed in Complaint Nos. S.S.C. No.13296 of 2015, S.S.C. No.13295 of 2015 and S.S.C. No.13294 of 2015 by the Judicial Magistrate, 25th Court, Pune, be set aside subject to payment of cost of Rs.5,000/- in every complaint.
- (c) The cost of be deposited before the District Legal Services Authority, Pune within two weeks from today, and the complaints be restored subject to deposit of the costs.
- (d) The Appellant is directed to appear before the learned Magistrate on 13th March 2023, with directions to take necessary steps for securing presence of the Respondents.

(S. M. MODAK, J.)