

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

**APPLICATION FOR LEAVE TO APPEAL NO. 196 OF 2022
(Serial No. 19)**

Kalani Marketing Private Ltd. ...Applicant
vs.

1. The State of Maharashtra

2. Smt. Sandhya Sravankumar Kushavaha ...Respondents

**ALONGWITH
APPLICATION FOR LEAVE TO APPEAL NO. 197 OF 2022
(Serial No. 20)**

Kalani Marketing Private Ltd. ...Applicant
vs.

1. The State of Maharashtra

2. Mr. Rakesh Balkrishnan More ...Respondents

Mr. Raviraj Gamare - Advocate for the Applicant

Mr. Y. Y. Dabke - APP for the State in ALP No. 196 of 2022

Mr. H. J. Dedhia – APP for the State in ALP No. 197 of 2022

CORAM : S. M. MODAK, J.

DATE : 05th JANUARY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant.

2. While issuing notice on 11/10/2022, this Court has made

it clear that endeavour will be made to dispose of the application at the admission stage. Notice is served on the Respondent-accused through her husband and also intimated to her on mobile. It is mentioned in the farad sheet dated 19/12/2022. These are the facts of Criminal Application No. 196 of 2022. Whereas in Criminal Application No. 197 of 2022, notice was served on the Respondent No. 2 only. It is mentioned in the farad sheet dated 19/12/2022.

3. After hearing learned Advocate for the Applicant and after going through the record, this is not only clear cut case of granting of leave to prefer an appeal but this is clear cut case of allowing the appeals. Hence special leave to appeal is granted and both the appeals are taken up for final hearing.

4. The present Appellant filed two complaints for the offence punishable under Section 138 of the Negotiable Instruments Act against two different accused persons mentioned in the complaints. The Court has issued notice only against the accused no. 1 and that is why they only have been impleaded in these appeals. The complainant and accused no. 1 have decided to refer the matter

to Lok Adalat and that is why they have filed pursis on 27/07/2022. Its copy is placed on record. I have read it. It only mentions that for the purpose of settlement, the matter is referred to Lok Adalat. Unfortunately, they were not settled. In spite of that the learned Magistrate who was acting as panel head on 13/08/2022 was pleased to dispose of the cases by acquitting the accused. There is reference of the pursis in the said order.

5. The grievance is that in fact the matters were not settled. This can be evidenced when the application filed before the trial Court on 02/09/2022 is perused. The complainant has prayed that in fact the matters are not settled and hence matters be restored. However the learned Magistrate as per order dated 02/09/2022 was pleased to reject those applications for the reason that court is not having jurisdiction to restore them. I have perused that order. There is categorical finding that there is no settlement in writing on record and it was bonafide mistake on the part of the Court. However, the learned Magistrate has not shown courage to inform this fact to the chairman DLSA Thane. Even the power of revision could have been exercised by the learned Sessions Judge, if the learned Magistrate

could have apprised about this bonafide mistake.

6. In view of that the orders cannot be sustained. Hence need to be set aside. At the same time it is important to note that the learned Magistrate who was head of Lok Adalat panel should be careful while passing the Order.

7. Hence following Order is passed:-

ORDER

- (i) Applications are allowed.
- (ii) The Orders dated 13/08/2022 and 02/09/2022 are set aside.
- (iii) The complaint case No. SCC 1806 of 2020 and complaint case no. SCC 1809 of 2022 are restored to the file.
- (iv) The learned Magistrate is directed to proceed with the cases after issuing summons to the respective accused no. 1.
- (v) Copy of this order be send to learned Chairman D.L.S.A. Thane for necessary information and action, if any.

[S. M. MODAK, J.]