

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 405/2023

APPELLANT : Shri Haji Mohd. Salim s/o Haji Abdul Jabbar
Singhania, Aged 54 years, Prop. M/s. D.
Indian Steel Industries, R/o Plot no.B-13,
M.I.D.C., Amravati, P.S.Faijarpura, Amravati, Tq.
and Distt. Amravati.

VERSUS

RESPONDENTS : 1. State of Maharashtra
Through PSO Naupada Police Station,
Thane West,
Thane, 400 602.

2. Toss Automation Systems Pvt. Ltd.,
through its Directors, Shri Ravi Madana,
R/o 2, Deepa Kamakshi Cooperative
Housing Society Near Risk Care Hospital,
Makhmali Talao, Thane (West).

3. Shri Ravi Madan, Director
Toss Automation Systems Pvt. Ltd.
R/o 13-A, Godrej Eden,
Labila Society, Holly House
Wood Pawar Nagar, 5th Floor,
Thane (West) -601

Mr. S.O. Ahmed, Advocate for the applicant.
Mr. I.J. Damle, APP for State.
Mr. P.U. Nandanwar, Advocate for non-applicant no.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED : JUNE 16, 2023.

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. Learned Advocate for the appellant submitted that the complaint is dismissed only on the ground that the appellant was not present for verification purpose. In fact, counsel for the appellant has not informed him about the dates. Thus, there is sufficient reason and the cheque involved in the complaint for Rs. 17,50,000/- and, therefore, the complaint be restored to its original stage.

4. Learned APP has submitted that learned Magistrate has not committed any error by dismissing the complaint for want of prosecution, as the complainant was absent and no verification of averments in the complaint took place. The learned counsel for respondent no.2 addressed the same contention and submitted that case was pending for verification for approximately for about three years. Therefore, learned Magistrate has passed the order.

5. Learned counsel Shri Ahmed has placed reliance on the order of this Court in **Criminal Application (APL) No.890/2018** (Shri Ashutosh S/o Ram Shewalkar Vs. State of Maharashtra). Perused the complaint as well as order of the learned Magistrate. The learned Magistrate has recorded that the case was pending for verification and the complainant has not turned up and not made out case to issue process. However, the respondents have not been able to point out what prejudice will be caused, if the complaint is

restored at its original stage. Admittedly, the appellant has good reason as his advocate has not informed the date of verification to him and advised him that he should remain present as and when called.

6. In the above facts, the learned Magistrate has not committed any error but, in the interest of justice, the appeal deserves to be allowed. Hence, I proceed to pass the following order:-

(i) The impugned order passed by Judicial Magistrate First Class, Court No.5 Amravati in Summary Criminal Case No.2904/2014 at original stage.

(ii) The Judicial Magistrate First Class, Court No.5, Amravati to whom the matter was assigned shall proceed in the matter as per law.

(iii) The appellant shall attend proceedings before the learned Magistrate on 3rd July, 2023 at 11.00 a.m. and abide by further orders in the matter.

(iv) Criminal Appeal is allowed in the above terms. In the circumstances, parties to bear their own costs.

(URMILA JOSHI-PHALKE, J.)