



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO. 266 OF 2018**

Appasaheb s/o Ganpatrao Malwade,
Age : 35 years, Occu : Service,
R/o. Row House No. 31/1, plot No.-31,
Phase no.-02 Gut no. 40, Vastuniraman
Sai Nagari, Hirapur, Aurangabad.

...APPLICANT
(Original Complainant)

VERSUS

1. Shejul Construction (Company)
Through its Prop. Santosh s/o
Sahebrao Shejul, Age : Major,
Occu : Business, R/o. R-29/8,
Tornagud Nagar, N-2, Aurangabad.
2. Santosh s/o Sahebrao Shejul,
Age : Major, Occu : Business,
R/o. R-29/8, Tornagud Nagar,
N-2, Aurangabad.

...RESPONDENTS
... (Original Accused)

...
Advocate for the Applicant : Mr. B. N. Magar
Advocate for Respondent Nos. 1 and 2 : Mr. R. V. Gore
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30th JANUARY, 2024
PRONOUNCED ON : 1st FEBRUARY, 2024

ORDER :

1. Instant leave to file appeal arises out of judgment and order of acquittal passed by learned Judicial Magistrate First Class, Aurangabad in S.C.C. No. 3507/2014, dated 06.09.2017

thereby acquitting present respondents from offence under Section 138 of Negotiable Instruments Act.

2. In support of relief of leave, learned counsel submitted that present applicant had initiated above proceeding on account of dishonour of cheque issued by respondent towards dues. He submitted that accused, who is in construction business, agreed to construct houses for workers and entered into an agreement with almost 18 persons. However, in spite of accepting Rs. 1,25,000/- from such persons by way of cheque, the project was cancelled and therefore money was demanded back and towards its repayment, cheque was issued but the same was dishonoured. It is further submitted that full proof case was made out, however, the learned trial Judge in spite of issuing process, by order dated 06.09.2017 dismissed the complaint for want of prosecution. According to learned counsel, the said order is illegal and bad in law and therefore appeal is intended to be preferred and hence he seeks leave to file appeal.

3. Above application is opposed by learned counsel for respondents - accused by submitting that there is utter negligence in prosecuting the matter and therefore the learned

trial Court has rightly dismissed the matter for want of prosecution. However at the end, learned counsel submits that if at all the Court is granting leave, then heavy costs may be imposed.

4. After considering the above submissions, it seems that present applicant instituted proceedings under Section 138 of the Negotiable Instruments Act alleging dishonour of cheque issued by accused towards legal dues. Papers show that S.C.C. No. 3507/2014 was filed on 02.05.2014. It is also seen that process was also issued on 12.06.2014. Record further shows that as complainant remained absent, by order dated 20.12.2016 he was directed to take steps. As he did not appear and failed to prosecute the case and remained absent since long, matter was put up for dismissal order on 23.06.2017 and finally on 06.09.2017 impugned order of dismissal for want of prosecution has been passed.

5. Perused the impugned order. In paragraph No. 2 learned trial Court has held that complainant failed to secure presence of the accused and to take effective steps and as the matter was old and there being no progress, above order seems to have been passed.

6. Thus it is clear that proceedings are dismissed for want of prosecution. Before this Court, accused did not seriously question the instant application, rather prayed for imposing costs.

7. In the light of above discussion, the observation of the trial Judge, more particularly in paragraph No. 2 and taking into account reasons for dismissal, relief as prayed deserves to be granted by allowing the application. Hence, I proceed to pass the following order :-

O R D E R

- (i) Application stands allowed.
- (ii) Leave is granted to file appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands admitted.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)

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