

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 637 OF 2005

Chandrakant Salavi ...Appellant

vs.

I. U. Kothari and Anr. ...Respondents

Mr. Vishwanath Talkute - Advocate for the Appellant

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 01st FEBRUARY, 2024

P. C. :-

1. In fact this appeal is listed by the Office and not as per the circulation. When it is called out, learned Advocate Shri Talkute at great pains submitted that now his client does not want to prosecute this appeal. It is for the reason that this appeal is listed after the period of more than 18 years and now his client has almost lost the hope of getting any favourable orders. It may be due to lapse of time or it may be due to the fact that Respondent may be available or may not be alive also.

2. The Court of the Metropolitan Magistrate, Mumbai as per the judgment dated 30/08/2003 has acquitted the Respondent for the

offence punishable under Section 138 of the Negotiable Instruments Act. There are two cheques involved. One is for Rs. 89,000/- and another is for Rs. 22,000/-. No doubt we can dispose of this appeal for non prosecution, but question does not ends there.

3. He also submitted that few years back, he has given certain recommendations by way of letter written to the Hon'ble Chief Justice. He has recommended for listing of old matters on priority basis so that it can be ascertained:-

- a) whether the parties are alive or
- b) whether their interest still subsist or
- c) whether the original proceedings are disposed of.

He has assured that he will give copy of this letter to this Court and in fact he has given copy of letter dated 16/08/2011 addressed to the Hon'ble Chief Justice. I have read it. So question posed before this Court is whether any steps can be taken to resolve this issue.

Referring appeals to Lok Adalat

4. It is true that this issue is not coming for the first time before this Court (Coram: S. M. Modak, J.). Issue was raised by the respective Counsels that parties are not in touch with them and even letters sent by them have returned back. Considering the magnitude, this Court

has kept 100 of matters before Lok Adalat and even Office has issued notices to respective parties. Those matters where the appeal proceedings arising out of judgment of acquittal for offence under Section 138 of the Negotiable Instruments Act. However, the experience was not encouraging. Those appeals were again kept before regular Court. In hardly few matters, the litigants have appeared but it has not culminated into disposal by way of settlement.

Referring appeals to Mediation

5. It was felt that it was difficult to secure presence of the parties before Lok Adalat held in this Court. To overcome this difficulty, it was felt necessary to refer the dispute to District Legal Services Authority. Hence few of the matters were also referred to the District Legal Services Authority with certain directions to issue notice to those parties. However these directions are case centric. So also yet reports are not received in those matters.

6. The proceedings need to be listed in more numbers. The Hon'ble Supreme Court and also this Court has dealt with on various occasions about the chronic problem of huge pendency. There are various views expressed by the Constitutional Courts either while passing the orders or during conducting hearing of those matters. In

fact there is one more reason for piling up of cases, it is due to worldwide spread of Covid-19. So, the circumstances warrant us to take some urgent measures.

7. Before the Division Bench of the Hon'ble Supreme Court (Comprising Justice Ajay Rastogi and Justice C.T Ravikumar) there was a displeasure expressed over listing of cases in one High Court due to huge piling. While replying to this issue, Division Bench expressed grave concern over the alarming situation and said :-

“as traditional methods are unable to decongest the Judiciary something needs to be done urgently”.

But individual efforts are not sufficient. We need to have concerted efforts. Even learned Secretary High Court Legal Services Committee and Deputy Registrar, High Court Mediation Monitoring Committee can also take some initiatives. Even I have requested them to come to Court for their suggestions. They had come also.

Concerted efforts

8. Such old matters can be identified and then directions can be given. However if these matters are listed on daily board, it will consume much time of the Court in ascertaining from the respective advocates the situation prevailing. So certain modalities can be decided.

It includes identifying the category of the litigation, the districts and passing necessary directions to District Legal Services Authority. This Court feels that this exercise can be done also by Registrar (Judicial-I). For doing that exercise, administrative directions will be required. This Court feels that the Secretary, High Court Legal Services Committee and Deputy Registrar, High Court Mediation Monitoring Committee can work in tandem.

9. During that exercise they can welcome the suggestions from the advocates like Advocate Mr. Talkute.

10. In view of that following order:-

ORDER

(A) This appeal is disposed of for non prosecution.

General directions

(A) Secretary, High Court Legal Services Committee in co-ordination with Deputy Registrar, High Court Mediation Monitoring Committee **to list out the appeals preferably within three weeks** arising out of **Section 138** of the **Negotiable Instruments Act which are pending for more than five years from today.**

(B) **Registrar (Judicial-I)** to co-operate by giving necessary data.

- (C) Secretary High Court Legal Services Committee to seek **administrative directions** as early as possible from Hon'ble Chairman High Court Legal Services Committee for listing of all these appeals before Registrar (Judicial-I) by making necessary proposal.
- (D) Then all these **appeals be listed before Registrar (Judicial-I)**.
- (E) **Registrar (Judicial-I)** to ascertain the presence of the Advocates and
- a) **if both the parties expressed desire to contest**, then place these appeals before the **Court for adjudication**.
- b) **Registrar (Judicial-I) if finds that for some reason or other appeals cannot be placed before Regular Court for hearing then:-**
- (I) directions be passed to refer the matters to **concerned District Legal Services Authority** for the purpose of :-
- (i) issuing notices to the parties,
 - (ii) ascertaining whether parties are alive or not and
 - (iii) whether they are interested in prosecuting the appeal or not and
 - (iv) whether they want to settle the matter and
 - (v) If required refer it to Mediator appointed locally.

- (F) Secretary High Court Legal Services Committee, and Deputy Registrar, High Court Mediation Monitoring Committee **to call a periodical report from District Legal Services Authority** about the progress of the direction and then to place it before the Court for further direction.
- (G) **Secretary, High Court Legal Services Committee and Deputy Registrar,** High Court Mediation Monitoring Committee to co-ordinate and supervise the proceedings before District Legal Services Authority.
- (H) Copy of this Order be sent to the concerned.

[S. M. MODAK, J.]