

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

CRIMINAL APPEAL NO. 660 OF 2024

M/s. Unilab Chemicals &
Pharmaceuticals Pvt. Ltd.

...Applicant

vs.

M/s. Chemico and Ors.

...Respondents

Mr. Gandhar Raikar a/w. Ms. Iyanah Parbhoo :-	Advocate for Applicant.
Mr. H. J. Dedhia :-	APP for Respondent No. 3-State.

CORAM : S. M. MODAK, J.

DATE : 24th JULY 2024

P. C. :-

1. Heard learned Advocate Mr. Raikar for the Appellant / Complainant. The Respondent accused has not appeared inspite of service through local police and also by a publication which is recorded in the order dated 12th June 2024. Earlier there was a conviction by Court of Metropolitan Magistrate 14th Court, Andheri on 1st March 2014 which was for an offence punishable under Section 138 of the

Negotiable Instruments Act, 1881 ['N.I.Act']. The Respondent No. 1 is a partnership firm and Respondent No. 2 is its partner. When both have preferred Criminal Appeal No. 295 of 2014 it was allowed as per judgment dated 29th June 2021. The conviction was set aside.

2. Initially the Complainant filed Criminal Revision. As per the order dated 12th June 2024 liberty was granted to convert it into an Appeal because Revision is not maintainable when there is a provision of an Appeal. As per the provisions of Section 378(4) of Code of Criminal Procedure [Cr.P.C.] an appeal is maintainable against judgment of acquittal delivered by the Appellate Court.

3. There is only prayer for remanding the matter to the Appellate Court. I am convinced and inclined to remand the matter to the Appellate Court. My attention is invited to the following Circulars / orders / notices. They are as follows :-

- (i) Office order issued by City Civil Court dated 27th November 2020. (Page-142)
- (ii) Office order No. 73 of 2021 dated 5th April 2021 issued by City Civil Court. (Page-149)

- (iii) Office order No. 81 of 2021 issued by City Civil Court dated 16th April 2021. (Page-152)
- (iv) Office order No. 85 of 2021 dated 30th April 2021.
- (v) Office order No. 90 of 2021 dated 6th May 2021.
- (vi) Order dated 3rd March 2021 passed on Roznama regarding hearing the arguments of Appellant and adjourning matter on 16th March 2021 for hearing arguments of Respondent / Complainant. (Page-180).
- (vii) On that date Covid directions were in force and one of the directions mentions about not passing adverse orders.
- (viii) Order dated 16th March 2021 (Page-181) closing the matter for judgment recording absence of Respondent.
- (ix) On 30 March 2021 (Page-122) again adjourned the matter for judgment.
- (x) On 9th April 2021 (Page-183) adjourned the matter for judgment.
- (xi) Order dated 20th May 2021 adjourned the matter for judgment.

4. On this background, the Complainant moved an Application before the Appellate Court seeking permission to make oral submissions. It was rejected for the reason that points for determination are already framed and findings are recorded. The order

is of dated 22 June 2021 (Page-186), whereas the impugned judgment was pronounced on 29th June 2021. I am inclined to set aside this judgment for two reasons. They are :-

- (i) When Covid guidelines were in force, Court is directed not to pass adverse orders. This is violated.
- (ii) When the Complainant himself has expressed desire to argue the matter, on 22nd June 2021 it was rejected and the reasons are ostensibly untrue. Because in the impugned judgment there is no reference that points for determination and dictation was given on 22nd June 2021. This amounts to denial an opportunity.

5. Hence, Appeal needs to be allowed. Hence the order:-

ORDER

- (i) Judgment dated 29th June 2021 passed by Court of Additional Sessions Judge, Greater Mumbai in Criminal Appeal No. 295 of 2014 is set aside.
- (ii) Appeal is restored.
- (iii) Let Appellant to appear before the Court of Additional Sessions Judge, Greater of Mumbai on 5th August 2024.
- (iv) The Appellate Court to do the needful for securing the presence of present respondents/appellants before him.

- (v) The appellate court to hear the parties and decide the appeal as per law.
- (v) In spite of sufficient opportunities, if the appellants/accused does not appear, the appellate court is free to decide the appeal as per rules.
- (vi) The present applicant to assist the appellate court in securing the presence of the appellants/accused.

[S. M. MODAK, J.]

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