

(2017) 11 BOM CK 0085
In the Bombay High Court
Case No : 1112 of 2017

Ram Gopal Automobiles

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Negotiable Instru

Citation : (2017) 11 BOM CK 0085

Hon'ble Judges : S.S. Shinde, Mangesh S. Patil

Bench : DIVISON BENCH

Advocate : A.V. Patil, Avinash Suryawanshi, A.R. Borulkar

Judgement

1. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.
2. This petition filed under article 226 and 227 of the Constitution of India brings out yet another instance of delay in disposal of matters which the statute as well as directions of the Supreme Court require to be disposed of in six months.
3. The petitioner is the original complainant in S.C.C. Nos. 1147 of 2008 and 1148 of 2008 pending on the file of learned J.M.F.C., Kannad, District, Aurangabad for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881. According to the petitioner, the cases are awaiting disposal since last more than nine years and inspite of attempts made by him successive Magistrates have not been able to dispose of the cases. Hence, the writ petition seeking direction to the learned J.M.F.C. to decide the matters within a period of four months.
4. We have heard the learned Advocate for the petitioner and the learned A.P.P. We have perused the copies of the record and proceedings filed along with the petition.

5. According to the learned Advocate for the petitioner in blatant violation of the mandate of law as contained in Section 145 of the Negotiable Instruments Act and the directions in the case of KSL & Industries Ltd. V/s. Mannalal Khandelwal & Anr; 2005 (2) All MLR 581, and Indian Bank Association and Ors. V/s. Union of India and Anr; AIR 2014 SC 2528, the successive Magistrates have not been able to dispose of these matters in time. According to the learned Advocate, inordinate delay in disposal of the cases in violation of such directions cannot be digested. When the law requires such matters to be decided expeditiously bringing a civil liability under a criminal law, the purpose of such mandate of law would be defeated if the matters are not decided expeditiously.

6. The learned A.P.P. fairly conceded that the matters under Section 138 of the Negotiable Instruments Act need to be decided expeditiously.

7. A perusal of the extract of the C.I.S. (Case Information System) statement of the Civil and Criminal Court, Kannad in respect of these two cases reveals that the cases were filed on 03.10.2008 and took almost ten months to cause appearance of the accused. Then further period of nine months was lost in recording the plea. Since 08.07.2010, the matters were awaiting hearing till 16.11.2013. It is only on 29.03.2014 that the recording of deposition actually began and since then the matters are part heard. It is apparent from the copies of the applications filed along with the petition that at times the accused filed applications for variety of reasons for closing the cases and some time must have been lost in obtaining the say of the petitioner on these applications and deciding them by extending opportunity of being heard. However, we must mention that a bare look of the aforementioned facts depicts a sorry state of affairs.

8. The whole purpose of making a civil liability an offence the intention of the legislature was to enhance confidence in the business community about the transactions entered into with Negotiable Instruments. The paramount consideration therefore of every Criminal Court conducting a case under Section 138 of the Negotiable Instruments Act is to see to it that the intention of the legislature as demonstrated from time to time by virtue of various amendments incorporated in Chapter XVII of the Negotiable Instruments Act was to see that such cases are disposed of as expeditiously as possible.

9. Even recently the Supreme Court in Criminal Appeal No. 1731 of 2017 arising out of Special Leave Petition (Criminal) No. 5451 of 2017, M/s. Meters and Instruments Private Limited and Anr. V/s. Kanchan Mehta decided on 05.10.2017 by referring to the catena of decisions rendered by the Supreme Court and Bombay High Court has made following observations: " ...Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily."

10. The reading of this judgment clearly shows the anxiety expressed by the Supreme Court having seen that almost 20% of the cases pending in the

Criminal Courts in India relate to the offences punishable under Section 138 of the Negotiable Instruments Act. It is in view of such gravity of the matter, it is utmost necessary for a Criminal Court to bear in mind such judicial pronouncements and make endeavour to dispose of the cases punishable under Section 138 of the Negotiable Instruments Act with desired promptitude.

11. It is pertinent to mention here that during pendency of this matter, we have called statistics from the Registry about pendency of cases under Section 138 of the Negotiable Instruments Act in various districts falling under the jurisdiction of this Bench and the statistics reads as under:

Sr. No. DISTRICT TOTAL PENDENCY IN NUMBERS

1 AURANGABAD 15400

2 AHMEDNAGAR 16213

3 NANDURBAR 751

4 PARBHANI 4145

5 OSMANABAD 4414

6 JALNA 4820

7 DHULE 3099

8 NANDED 3419

9 BEED 5820

10 LATUR 5309

11 JALGAON 8706

TOTAL 72096

The above figures indeed demonstrate how severe the problem regarding pendency of these cases is. Realising such huge pendency every where the Supreme Court in the case of M/s. Meters and Instruments Private Limited and Anr. (supra) has issued following directions:

"17. Having regard to magnitude of challenge posed by cases filed under Section 138 of the Act, which constitute about 20% of the total number of cases filed in the Courts (as per 213 Report of the Law Commission) and earlier directions of this Court in this regard, it appears to be necessary that the situation is reviewed by the High Courts and updated directions are issued. Interactions, action plans and monitoring are continuing steps mandated by Articles 39A and 21 of the Constitution to achieve the goal of access to justice. Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There appears to be need to consider categories of cases which can be partly or entirely concluded ?online? without physical presence of

the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. Traffic challans may perhaps be one such category. Atleast some number of Section 138 cases can be decided online. If complaint with affidavits and documents can be filed online, process issued online and accused pays the specified amount online, it may obviate the need for personal appearance of the complainant or the accused. Only if the accused contests, need for appearance of parties may arise which may be through counsel and wherever viable, video conferencing can be used. Personal appearance can be dispensed with on suitable self operating conditions. This is a matter to be considered by the High Courts and wherever viable, appropriate directions can be issued.

21. It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court."

12. In view of the fact that cognizance of such alarming situation is taken by the Supreme Court, we need not delve much and deem it fit to request the Registrar General to place the matter before Hon"ble the Chief Justice for issuing appropriate administrative directions in the light of the directions of the Supreme Court.

13. Turning back to the matter in hand, the learned J.M.F.C. who is presently posted at Kannad has submitted a status report dated 22.09.2017 in respect of these two cases. He has inter alia pointed out that till the matters were assigned to him in the year 2015 there was no substantial progress and he has endeavoured to persuade the parties to conduct the hearing from time to time. He has also pointed out as to how the successive applications on behalf of the accused have caused delay since he was required to decide those applications albeit he has rejected them. It is obvious that the very fact that the matters have prolonged for nine years suggests that there could be several reasons and all the stake holders must have had some role or the other in causing the delay. We don't think it necessary to enter into such inquiry and it would be appropriate in the fitness of things to simply direct the learned J.M.F.C., Kannad at least henceforth to conduct the hearing of these cases on day to day basis and endeavour to dispose them finally within two months from the receipt of the writ. The Registry shall ensure that the writ reaches the concerned Court on or before 15.11.2017. We also express our dissatisfaction as to the manner in which the parties have not been co-operating the learned Magistrate for expeditious disposal and we hope and trust that at least hereafter they would extend utmost co-operation to the learned Magistrate.

14. In the result, the petition succeeds in terms of the above terms. The rule is made absolute accordingly.