
(2009) 09 BOM CK 0178

In the Bombay High Court

Case No : Criminal Appeal No. 735 and Criminal Application No. 3844 of 2008

State Bank of India

APPELLANT

Vs

Prakash Rukman Patra

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 09 BOM CK 0178

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S. Lavtawar, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—Heard learned Advocate for the applicant. Respondent is absent. Leave granted.

2. It is contended on behalf of the applicant State Bank of India, Personnel Banking Branch, Ramdaspath, Nagpur that the applicant (original complainant: through Counsel) were present in the trial Court in Summary Criminal Case No. 7263/2006 right from the filing of the complaint i.e. 04.04.2006 till 02.05.2008, but on the adjourned date i.e. on 20.08.2008, the following order was passed by learned 2nd Joint Judicial Magistrate, First Class, Nagpur:

Before the Court:

Complainant and counsel absent when called repeatedly till 5.00 P.M. Order passed on Exh. 1, case is dismissed for want of prosecution. Accused is acquitted. Proceedings of this case is closed.

3. It is contended on behalf of the applicant that the applicant has a very good case on merits and if leave is not granted serious prejudice would be caused to the applicant, considering that the respondent had failed to appear in the trial Court despite service of summons in respect of accusations punishable u/s. 138

of the Negotiable Instruments Act. It is also contended that despite notice of this proceedings published in daily "Hitavada" an English newspaper published from Nagpur, the respondent accused remained absent. Reference was made to the ruling in Mohd. Azeem v. A. Venkatesh & Anr. reported in 2002 (7) SCC 76, in order to contend that for one singular default in appearance on the part of the complainant, it was not proper on the part of the learned 2nd Judicial Magistrate F.C. to dismiss the complaint itself.

4. Hence the Appeal has to be allowed. The impugned order dated 20.08.2008 is quashed and set aside. The compliant is restored to the file of learned 2nd Judicial Magistrate, First Class, Nagpur, with a direction that the learned Magistrate shall proceed further on merits in accordance with law. Appeal is allowed accordingly.