

Narendra @ Nandu Vs. Kishor

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Court : Mumbai Nagpur

Decided On : Jul-24-2013

Judge : P.D. Kode

Appeal No. : Criminal Application (APL) No. 323 of 2013

Appellant : Narendra @ Nandu

Respondent : Kishor

Judgement :

Oral Judgment:

Heard. Rule. Rule returnable forthwith. Heard finally by consent of the parties.

2. By this application, the accused in Criminal Case No. 203/2009 pending on the file of learned J.M.F.C. Court No.2, Yavatmal, has prayed for exercising powers under section 482 of the Cr.P.C. for quashing and setting aside the order dated 18.03.2013. The said accused is facing the accusation in the said case of commission of an offence under section 138 of the Negotiable Instruments Act on the count of cheque of an amount of Rs.2,35,000/- given by him having bounced and he has failed to pay the demanded amount in spite of service of notice upon him.

3. Leaned counsel for the applicant submitted that after the evidence in the said case was over, he examined two witnesses in his defence and filed an application

for examining third witness i.e. one of his relative and resident of Buldhana. It is submitted that upon his application, the trial court was pleased to issue a summons to the said witness, through registered post A/D on 02.02.2013. However, the acknowledgment showing whether witness summons issued is served or otherwise, was not received back. It is submitted that ignoring the said fact, merely on the count that said witness was relative of the applicant, the trial court observed that applicant should have kept the said witness present but he is delaying the case on the said tactics. It is urged that though applicant submitted an application for seeking time for making efforts to keep the said witness present, the said application was rejected by observing that sufficient opportunity has been given to the applicant to lead his defence on merit and he has failed to produce the witness. It is submitted that the trial court made unwarranted observations that his defence is struck off and posted the matter for further steps. It is urged that passing of such an order was not only erroneous but was wholly unwarranted in the facts and circumstances of this case. It is thus contended that the said order, striking off his defence cannot be legally sustained and be quashed and set aside.

4. The perusal of the order justifies all the submissions canvassed by learned counsel for the applicant. It is unfortunate that in spite of not receiving the acknowledgment for the witness summons issued by registered post a/d such observations are made and the defence of the applicant/accused was struck off. Such an order cannot be legally sustained. The fairness to the parties at trial is the soul of a criminal trial. However, having regard to the statement made on behalf of the non applicant that the case is of the year 2009, some fetters deserve to be put upon the applicant for expeditious disposal of the said case.

5. Having regard to the controversy arisen, the learned counsel for the applicant was asked whether the applicant is in a position to keep his witness present before the court. The learned counsel thereon having submitted that presently the applicant is having inimical terms with the said witness, he has no other alternative but to enforce his presence through process of the court.

6. In the aforesaid premise, order dated 18.03.2013 sticking (sic striking) off the defence of the applicant and posting the matter for further steps is hereby quashed

and set aside with a direction to the trial court to proceed with the case, in accordance with law from the stage at which the said order was passed. Needless to add that the trial court to ascertain whether the summons issued was served upon the witness or otherwise, and accordingly issue proper directions in accordance with law for securing presence of the witness, intended to be examined by the applicant. The applicant shall cooperate for early disposal of the case. The trial court to make best endeavor to dispose the case as early as possible and in any event within a period of four months from the date of receipt of this order.

Rule made absolute. No order as to costs.

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