Bombay High Court Shri Gajanan Narayan Joshi vs Haridas Bhikulal Jobanputra on 18 July, 2009 Bench: P. D. Kode 1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION NO.530/2009
WITH

CRIMINAL APPLICATION NO.531/2009
WITH

CRIMINAL APPLICATION NO.532/2009

(1) Criminal Application No.530/2009

Shri Gajanan Narayan Joshi,
Aged about 53 years,
Occupation - Business,

R/o. Joshi Medical Stores, Akola
Tahsil and District - Akola. .. Petitioner

.. Versus ..

1. Haridas Bhikulal Jobanputra,
Aged - Adult, Occupation - Business,
R/o. Amrutwadi, Akola.

2. State of Maharashtra,
through PSO, Akot File,
Akola. .. Respondents

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(2) Criminal Application No.531/2009

Shri Gajanan Narayan Joshi,

Aged about 53 years,
Occupation - Business,

R/o. Joshi Medical Stores, Akola
Tahsil and District - Akola. .. Petitioner

.. Versus ..

1. Manish Kumar Rasiklal Mehata,
Aged - Adult, Occupation - Business,

R/o. Paras Novelty & Gift Center,
Tajnapeth, Akola,

Tahsil and District - Akola.

2. State of Maharashtra,

through DGP Akola. .. Respondents

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(3) Criminal Application No.532/2009

Shri Gajanan Narayan Joshi,
Aged about 53 years,
Occupation - Business,

R/o. Joshi Medical Stores, Akola
Tahsil and District - Akola. .. Petitioner

.. Versus ..

1. Piyush R. Shaha,
Aged : Adult, Occupation - Business,
R/o. Patel Medical Stores,
Near Ravi Scooter,
Collector Office Road,
Akola.

2. State of Maharashtra,
through DGP Akola. .. Respondents

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Mr. A.H. Lohiya, Advocate h/f Mr. S.P. Deshpande, Advocate for petitioner,
Mr. S.S. Joshi, Advocate for respondent no.1,
None for respondent no.1 in CA No.531/2009,

Mr. C.N. Adgokar, APP for respondent no.2.

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CORAM : P.D. KODE, J.

ig DATED : JULY 18, 2009. ORAL JUDGMENT : 1. Heard. 2. Rule. Returnable forthwith. Heard finally by consent of parties. 3. By these applications preferred under Section 482 of the Code of Criminal Procedure, petitioner/accused facing prosecution for commission of offence under Section 138 of Negotiable Instruments Act in Summary Case No.4475/2006, 4514/2006 and 3927/2006 pending in Court of learned Chief Judicial Magistrate, Akola instituted upon the complaint filed by respective respondent no.1 in each of these respective petition, had thrown a challenge to order dated 16.10.2008 passed by learned Additional Sessions Judge, Akola rejecting each of applications in revision preferred by said petitioner against common order dated 24.7.2008 passed by trial

Court for the said summary criminal cases fixing each of said case for consideration on merits and for judgment. Needless to add that the petitioners have prayed for quashing and setting aside order dated 16.10.2008 passed by the learned Additional Sessions Judge and have further prayed for directing trial Court to proceed with the trial in accordance with the procedure prescribed under Code of Criminal Procedure. 4. The facts bereft of unnecessary details and restricted to limited controversy involved as disclosed from applications/the orders impugned are as under: During the pendency of said cases at a particular stage after recording the plea of the applicant i.e. :- (i) in SCC No. 4457 of 2006 after respondent No.1/complainant has led evidence on affidavit 19.7.2006 and petitioner had failed to cross- examine him after seeking number of adjournments and trial Court had passed order of no cross-examination on 23.2.2008 and was adjourned for recording statement of petitioner on 22.4.2008; (ii) in SCC No. 4514/2006 after respondent/complainant has led evidence on affidavit on 23.2.2007 and petitioner had failed to cross- examine him after seeking number of adjournments and trial Court had passed order of no cross-examination on 22.2.2008 and was adjourned for recording statement of petitioner; and (iii) in SCC No. 3927/2006 after respondent/complainant has led his evidence on affidavit and the petitioner had cross-examined him and petitioner was examined by trial Court under Section 313 of Code of Criminal Procedure and petitioner/accused in spite of taking adjournment had failed to lead evidence in his defence and the case was closed on 29.3.2008 and the same was adjourned from time to time for final argument; petitioner/accused has respectively filed a pursis respectively at Exh.53, 48 and 44 inter alia stating all matters being amicably settled/compounded in between himself and complainant and petitioner/accused has agreed for paying the cheque amount to complainant and he would be paying the same before next date fixed in the matter. 5. Learned counsel for respondent no.1 has urged that after filing of said pursis, trial court observing that same was not bearing the signature of learned Advocate for petitioner/accused had ordered complainant to look in the matter. It is also urged that learned counsel for complainant had noted matters stated in said pursis. It is further urged that thereafter the petitioner/accused having not paid the amount as stated in said pursis and pursis were filed on behalf of respondent no.1/complainant amongst other stating that in view of petitioner/accused being ready to pay the cheque amount in respective case and having filed pursis for granting him time; petitioner/accused has no right to conduct/contest matter on merits and hence all the said matters should be posted for further proceeding or for making the justice and accordingly the common order dated 24.7.2008 was passed by the trial Court upon complaint Exh.1 in each of the said cases. 6. Now reverting to common order impugned in the revision application the same reveals that after considering all the said facts and particularly after taking into consideration the pursis given by the accused, the trial court had posted the matter for considering the merits and for judgment. 7. It is the grievance of the learned counsel for the petitioner that the order passed by trial court denotes said cases being posted for judgment. It is his contention that the offences being not compounded, the trial Court was bound to proceed with said cases in

accordance with the law i.e. reviving the proceeding from the stage at which the same were stopped due presentation of a pursis by the accused/petitioner regarding the settlement which unfortunately had not taken place. Hence accordingly trial Court was bound to fix SCC Nos. 4457/2006 and 4514/2006 for recording the statement of petitioner/accused while SCC No. 3927/2006 for the arguments. It is his submission that trial Court was bound to proceed with said cases thereafter as per the procedure prescribed for such summary cases. The order passed by the trial Court fixing all the cases for the conclusions on merits and a judgment is wholly illegal, unwarranted and contrary to the procedure prescribed under the law. Similarly the order passed by the Additional Sessions Judge rejecting applications in revision preferred against the said order is also illegal as same impliedly approves the procedure by law being not followed by trial Court. It is thus crux of submission that both said orders are liable to be quashed and set aside. 8. Learned counsel for respondent no.1 has countered said submissions by urging that no unwarranted inferences of the matter being fixed for arguments and judgment and/or only for a judgment as canvassed by learned counsel for the petitioner emerges from the order passed by the trial Court. He has further urged that respondent no.1, at no point of time, had requested trial Court for fixing the matter for judgment and had merely requested for posting cases for further proceeding, as admittedly there was no settlement/compounding of matter and the cases were being delayed on such count of arriving of settlement. It is his submission of same being apparent from the fact of respondent no. 1 being required to file the pursis. It is thus his submission that since the conclusion as canvassed on behalf of petitioner is not emerging from the order passed by the trial Court, neither any fault can be found with the order passed by the trial Court nor with order confirming the same passed by Court of appeal which exercising powers in revision. Thus the challenge thrown to the said order being devoid of merits , applications deserve to be dismissed. 9. Now before embarking upon considering rival submissions it is necessary to say that respondent no.1 having not filed any reply to present petition nor placed on record pursis filed by respondent no.1 for supporting submissions canvassed about the same or about order passed by the trial Court upon the pursis presented on behalf of petitioner; by filing any document for supporting the same; all the same will deserve to be ignored due to material for appreciating same being not placed before the Court. Needless to add such a practice of making the submissions without producing the material for supporting the same deserves to be deprecated. 10. Now considering the controversy involved in the matter i.e. compounding of offences and the appellate revisional Court in the said context having rightly observed that in event of compromise having not occurred, the trial Court has no reason to pass the order dated 24.7.2008 still while rejecting applications in revision and directing the trial Court to proceed in the matter as per the provisions of law having not clarified certain aspects connected with such a direction given and having regard to delay caused in the matter in view of the confusion arisen due to said order passed and impugned in present applications had necessitated to make some dilation about the relevant aspect. 11. The subject relating to

compounding of an offence has been found dealt in Chapter XXIV of the Code of Criminal Procedure and particularly in Section 320 of the same while the procedure pertaining to summary trial has been found prescribed by Section 260 to 265 of the Code of Criminal Procedure. 12. The cursory glance at Section 320 (1) and (2) makes it abundantly clear that the offences mentioned in table given in said sub- sections being made compoundable by the persons mentioned in third column of said table. Now glance to said third column clearly reveals that permission of compounding from Court is necessary for the offences mentioned in a table given for sub-section (2) while no such a permission is necessary for offences mentioned in a table given in sub-section (1). The plain reading of the said provision in terms reveal that thus power to compound has been conferred only upon the person mentioned in the said third column who are generally either complainant/aggrieved and/or affected person. The power for compounding the offences mentioned in the said table is also extended for compounding of abetment of such offences by virtue of sub-section (3). Such a power for such offences has been found further extended for person under aged 18 years or for an idiots/ lunatics upon a person competent to contract on their behalf while the same has been found extended upon the legal representative of deceased person for a deceased who would have been competent to compound by virtue of provisions of sub-sections (1) and (2). The limits upon the powers to accord the permission as required under sub-section (2) are found extended and/or restricted by virtue of provisions of sub-section (5) and (6). The fetters on compounding of even such offences are found imposed on count of previous conviction by virtue of sub-section (7). The provisions of sub-section (9) makes it abundantly clearly that no offence other than mentioned in Section 320 i.e. other than mentioned in the tables given under sub-section (1) and (2) and/or permitted to be extended by virtue of provisions of sub-sections (3)and (4), can be compounded. 13. Thus carefully considering scheme for compounding provided under Code of Criminal Procedure by provisions of Section 320 makes it clear that power to compound even the offences mentioned in the said Section 320 is not at all conferred upon the accused in any manner or in other words the information about offence being compounded even for the said offences could be given only by the persons mentioned in third column of the said tables given under sub-section (1) and (2) of Section 320. Needless to add that the same would enable the concerned Court to pass appropriate order as required under Section 320 (8) of the Code of Criminal Procedure. Having regard to the same any information about compounding of offences given by any other person other than the person permitted to compound would be inconsequential. 14. Now considering the aforesaid aspect in light of the provisions of Section 147 of the Negotiable Instruments Act under which the offences punishable under the said Act is made compoundable, it can be safely said that power to compound such offences would be deemed to have been extended only upon the complainant/affected person etc. but not upon the accused. Such a conclusion is inevitable as non-abstante part of Section 147 of Negotiable Instruments Act is apparently related with the aspect of the offences under other Act other than IPC being not made compoundable by virtue of provisions of Section 320. The

same is obvious having regard to the purpose for which power of compounding offences has been found confined with the person mentioned in third column of tables mentioned in sub-sections (1) and (2) of Section 320. The same appears accordingly after taking into consideration purpose for which such a provisions are made and the practical aspect connected with same. 15. It is indeed true that compounding of an offence permitted to be compounded in most of the cases would involve arrival of bilateral agreement as compounding itself involve settlement of differences between affected person and offending an accused , still the whole object behind composition or permitting to compound being redressal of grievance of affected person, the legislature in its wisdom had conferred power to report of compounding of an offence upon the affected person/ or the persons standing in the shoes for them. 16. In the matter of compounding of an offences as permitted by Section 320 of the Code of Criminal Procedure it will not be out of place to point out that though the same appears to be akin with compromising of the civil matters as made permissible by provisions of Order 23 Rule 3 of the Code of Civil Procedure, still there exists a great deal of a difference in between them. Under the latter provision, the Court is required to examine the legality of the settlement or compromise arrived; while same is wholly unnecessary under the former provision. In event of compounding of an offence being reported to a criminal court by a person authorized to inform the same, it is wholly unnecessary for the Court to examine the terms of the settlement and/or to determine whether the same are complied or otherwise. The Criminal Court is only required to take into consideration the fact of offence being compounded being reported to it by a person authorised to do so and the said person having compounded the offence with a will or without threat, coercion, duress or undue influence. Needless to add that in event of such things being satisfactorily established would follow the order under Section 320 (8) of Cr.P.C. 17. Now even taking a practical view of accused having reported of arrival of compounding of offences and occurrence of such a thing could be in most of the cases due to arriving of bilateral agreement would require the Court to make the necessary inquiry by questioning the complainant , still the same should not be permitted to be extended unduly for a longer period as found to have been extended in the instant case and much a less on the count of the accused satisfying the terms of settlement of making the payment within one month. Needless to add that in event of compounding of an offences being not reported by proper person and/or after completing expeditiously inquiry about the relevant aspect and in event of Court coming to conclusion of compounding of an offences having not taken place , Court would be bound to fix the matter for further proceeding for completion of summary trial alike other criminal trials required to be completed as expeditiously as possible. 18. Now after considering in proper perspective the matters stated in the pursis given by the petitioner and even after taking most charitable view of the same showing his admission/willingness to pay cheque amount in view of the settlement being arrived, still it is difficult to accept the submission of learned counsel of the same amounting to admission of guilt the petitioner/accused has no right to contest the said cases on merits after filing of such a pursis. The same is obvious as construing the same as an admission

of guilt, the same should have disclosed a clear cut admission of commission of offence under Section 138 of the Negotiable Instruments Act or admission of all the facts constituting commission of such offences on his part. 19. Now the matters stated in the said pursis being not to the effect of petitioner/accused having committed offence under section 138 of the Negotiable Instruments Act or the matters admitted by him being insufficient to satisfy all the necessary ingredients constituting commission of such offences, it is difficult to accept the justification of submission to such effect canvassed by learned advocate for respondent no.1. At the cost of repetition it is prompted to record that agreement to pay cheque amount would never be construed as an admission of guilt of commission of offence under Section 138 of the Negotiable Instruments Act. 20. In the present case since accused was facing the prosecution for commission of an offence under Section 138 of Negotiable Instruments Act and in view of the provisions of Section 143 of the said Act , the Court requiring the said cases to be conducted summarily and thus the provisions prescribed under Section 262 to 265 of the Code of Criminal Procedure being required to be followed for such a cases and the narration mentioned hereinabove having revealed the stage at which the pursis was presented on behalf of the accused which has resulted in stagnation of the said proceeding, it will be necessary to say that in view of compounding having not occurred, the trial Court was bound to consider the aspect of hearing the accused as warranted under Section 254 sub clause (1) of Cr.P.C. for SCC No. 4457 of 2006 and 4517 of 2006 and thereafter to proceed in accordance with the procedure prescribed for such a trial. While for SCC No. 3927 of 2006 Court was bound to consider the matter in accordance with the law from a stage at which the same has stagnated due to passing of the pursis. 21. In the aforesaid state of affairs and the order passed by the trial Court revealing all the three cases being posted for "consideration on merits and for judgment" cannot be said to be an order passed by the trial Court in accordance with the procedure prescribed at the law. Needless to add that different stage at which the said cases were stagnated itself reveals that the same could not have been posted or at least two of them could not have been posted in such a manner by passing a common order. The Criminal Court not being expected to be a silent spectator at a criminal trial and being expected to navigate smooth voyage of criminal trial for quest of a truth was bound to give a clear directive in accordance with the law regarding the purpose for which the trial was posted in order to avoid arousing of confusion in the minds of the parties at a trial. For the said purpose trial Court was bound to fix the matter as indicated in the preceding paragraphs of this judgment. 22. As observed earlier though Court of Session by rightly observing that passing of such an order by a trial Court was wholly unnecessary has dismissed the applications in revision preferred, still the Sessions Court having missed the aspect of the order passed by the trial Court failing to fix the matter for definite purpose to avoid arousing of confusion in the minds of the parties at a trial and only chosen to give the direction for proceeding in accordance with the law also cannot be upheld. Needless to add ,as a superior Court, the Court of Session ought to have made such a correction in order passed by the trial Court for achieving such purpose. 23. In aforesaid

state of an affairs the orders passed by both the Courts cannot be sustained. Such a conclusion is inevitable as there appears merits in the submissions of learned counsel for the petitioner of the trial Court instead of proceeding with the matter in accordance with the law had posted the same for consideration on merits and for judgment in flagrant disregard with the provisions prescribed for such a trial. The rival submissions canvassed by the counsel for respondent no.1 of the matter being not fixed for a judgment and or the respondent no.1 had merely requested for posting the cases for further proceedings due to there being not settlement will not survive in view of latter part of the order passed by the trial Court itself revealing matter being fixed for a judgment at least in two cases before completion of the gamut of summary trial as prescribed by the procedural law and for the rest of the submissions no material being placed before this Court. 24. For all the reasons stated hereinabove for serving the ends of justice, the order passed by the Court of Sessions in all the said revision applications and so also by trial Court is hereby quashed and set aside to put at the rest unnecessary confusion arisen within the parties due to same. The trial court is directed to proceed with the matter in accordance with law from the stage at which the same was stagnated i.e. as clarified in paragraph no. 20 hereinabove. Since it is apparent that passing of such order has resulted in fore-stalling of trial for considerable amount, the trial court is directed to dispose of the said cases as expeditiously as possible. 25. Rule is made absolute in above terms. (P.D. KODE, J.) .....