


MHKO050038892018 	<p style="text-align: center;"><u>Order below Exh.29 in SCC 2292/2018</u></p> <p style="text-align: center;">Kunal Sarjerao Ghorpade Vs. Rup Rayon Mumbai CNR No.MHKO050038892018</p>
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The instant application is filed by complainant praying for issuance of non bailable warrants against accused no.1 to 3.

2. Heard learned counsel Mr. Toshniwal holding for learned counsel Mr. Shinde as well as learned counsel Mr. Sancheti for accused no.2 and 3.

Brief facts of the instant proceeding are as follows :-

3. The complainant has filed complaint under section 138 of Negotiable Instruments Act against accused no.1 to 3. It is pertinent to note here that the accused no.1 is a partnership firm through partner Mrs. Usha Bhartiya. Accused no.2 & 3 are individuals. Process was issued by this Court against the accused persons vide order dated 16/11/2018. Thereafter, accused no.2 & 3 appeared through learned counsel Mr. Sancheti by filing Vakalatnama at Exh.5. As accused no.1 was a partnership firm and not a physical entity, accused no.2 & 3 appeared in the matter. Thereafter, both the accused persons i.e. accused no.2 & 3 did not file any application for bail. However, as learned counsel Mr. Sancheti was present on behalf of accused no.3, plea was recorded below Exh.21.

4. Learned counsel Mr. Sancheti had filed an application

below Exh.6 praying for dismissal of complaint against accused no.1 & 2. The said application was rejected by this Court vide order dated 20/03/2021. Thereafter, it is been submitted before this Court that accused no.2 filed an revision application bearing Criminal Revision Application No.24/2022 before the Hon'ble Sessions Court, Ichalkaranji. It is been submitted before this Court that the said application is allowed and order dated 20/03/2021 has been set aside. However, on last date learned counsel Mr. Sancheti submits that there is typographical error in the title clause of the said revision application and the name of the accused no.2 has been typed incorrectly. Today, he submits that a miscellaneous application bearing number Criminal Miscellaneous Application No.54/2022 has been filed before the Hon'ble Session Court, Ichalkaranji for correction and is kept on 05/12/2022.

5. Today, learned counsel Mr. Toshniwal prays for issuance of nonailable warrants against all the accused persons. He submits that plea has been recorded against accused no.3 through learned counsel Mr. Sancheti. He submits that order in Criminal Revision Application No.24/2022 is not against accused no.1 & 2 and therefore, they also be issued nonailable warrants. In sum and substance learned counsel Mr. Toshwniwal prays for issuance of nonailable warrants against all the accused persons.

6. Per contra learned counsel Mr. Sancheti submits that prayer for dismissal of complaint was against accused no.1 & 2 and accordingly, Hon'ble Sessions Court, Ichalkaranji had allowed the

said revision. He further submits that miscellaneous application bearing Criminal Miscellaneous Application No.54/2022 is pending for correction and therefore, no warrant can be issued against accused no.1 & 2. He accordingly prays for rejection of instant application.

7. I have gone through the record. Perusal of application below Exh.6 shows that the said application was filed by accused no.1 & 2. Thereafter, it is seen that in the revision application only accused no.2 has been shown as applicant, and in the said name too, there appears to be typographical error. Learned counsel Mr. Sancheti has openly submitted that he has taken necessary steps by filing Criminal Miscellaneous Application No.54/2022 before the Hon'ble Sessions Court, Ichalkaranji for seeking clarification as well as correction in judgment passed by Hon'ble Sessions Court, Ichalkaranji on 12/10/2022. He has further submitted that the said application is kept on 05/12/2022. In my considered view, the complaint against accused no.2 undoubtedly appears to have been dropped. There is certain typographical error and for the same learned counsel Mr. Sancheti has already approached to the Hon'ble Court of Session, Ichalkaranji. Further, once the matter is pending for adjudication before the Appellate Court, it would be just and proper for this Court to fold its hands and wait for decision of Hon'ble Appellate Court. Before parting with the order it has been submitted by learned counsel Mr. Sancheti that all the accused persons i.e. accused no.1 being firm and accused no.2 & 3 in individual capacity have been granted relief of dropping of

proceeding. However, as per the operative order of Hon'ble Sessions Court, Ichalkaranji, it is seen that the proceeding is only dropped for original applicant i.e. accused no.2. Mr. Sancheti submits that he will seek clarification regarding the same by way of Criminal Miscellaneous Application No.54/2022. Thus, in view of said application being pending before Hon'ble Sessions Court, Ichalkaranji, I am of the view that the instant proceeding need to keep in abeyance until the accused persons seeks necessary relief. In view of the same, the application stands rejected. Matter be kept on 23/12/2022 for further orders.

Date- 03/12/2022
Ichalkaranji

(S. A. Ingley)
Judicial Magistrate First Class
Court No.2, Ichalkaranji

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Jadhav.
Name of Court	S. A. Ingley. 2 nd Jt. Civil Judge, Jr. Dn. & Judicial Magistrate F.C. Ichalkaranji.
Date of Dictation	03/12/2022
Judgment/order signed by P.O. on	03/12/2022
Judgment/order uploaded on	03/12/2022