

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 811 OF 2015**

Mustaq Ahmad Mehmud Shaikh,  
Age : 42 years, Occu.: Service,  
R/o.: 47/A, Ashiyana Colony,  
Government Hospital, Dhule ..APPLICANT

VERSUS

Abdul Razzak Abdul Qayyum  
@ Mama Pehalwan,  
Age : Major, Occu.: Business,  
R/o.: Haji Nagar, Wadjai Road,  
Tal Dhule, Dist. Dhule ..RESPONDENT

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Mr.A.S. Savale, advocate for the applicant

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**CORAM : M.T. JOSHI, J.**

**DATE : JUNE 25, 2015**

**PER COURT :**

1] Heard Mr. Savale, learned counsel for the applicant.

2] The complaint filed by the applicant for the offences punishable under section 500 and 501 of Indian Penal Code, was dismissed in default before

issuing summons to present respondent. The record shows that the learned Judicial Magistrate First Class had earlier called for the report from the concerned police station. After reaching of the report, present applicant submitted that he would lead further evidence so that, the order regarding issue of process can be passed. Thereafter, however, the applicant as well as his advocate remained absent on certain dates for a period of four months and thereafter, the complaint came to be dismissed in default.

2] Taking into consideration the overall facts, in order to have a decision on merit in the complaint, as a last chance, in my view, present application for grant of leave to file appeal deserves to be allowed and the appeal can also be allowed. Since the complaint was dismissed in default, there is no need to issue notice to the respondent/accused.

3] In view of above, present application for grant of leave to file appeal is hereby allowed. Leave granted.

4] The appeal be registered.

5] Heard.

6] For the reasons recorded above, the appeal is allowed without any order as to costs. The order of learned Judicial Magistrate First Class, dismissing the complaint in default, is hereby set aside and the complaint is restored to file, on the condition that the present appellant deposits an amount of Rs.500/- in the trial Court, which shall be appropriated by the Court towards penalty.

7] It is further directed if the present appellant or his counsel remains absent to lead the evidence

in future within three months, learned Judicial Magistrate First Class, would be at liberty to dismiss the complaint in default again.

8] The appellant is directed, to appear before the trial court on 6<sup>th</sup> of August, 2015.

9] The appeal stands allowed accordingly and disposed of.

9] Parties to act on authenticated copy of this order.

**[M.T. JOSHI, J.]**