

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1716 OF 2014
(CONVERTED INTO CRIMINAL APPEAL NO.150 OF 2015)

Vaishali @ Sonali w/o Balu @
Sonaji Tandle, Age 23 years,
Occ. Household, R/o At Ganori,
Taluka Phulambri,
District Aurangabad.

... APPLICANT

VERSUS

1. Shesherao s/o Rambhau Tandle,
Age 66 years, Occu. Agri.,
R/o At Ganori, Tq. Phulambri,
District Aurangabad.

2. Haridas s/o Shesherao Tandle,
Age 33 years, Occu. Agri.
R/o At Ganori, Tq. Phulambri,
District Aurangabad.

3. Arjun s/o Shesherao Tandle,
Age 66 years, Occu. Agri.
R/o At Ganori, Tq. Phulambri,
District Aurangabad.

4. Madhuri w/o Haridas Tandle,
Age 26 years, Occu. Household,
R/o Ganori, Tq. Phulambri,
District Aurangabad

... RESPONDENTS

.....
Shri A.S. Kadam, Advocate for applicant
Shri D.K. Thote, Advocate for respondents
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 12th February, 2015.

ORAL JUDGMENT:

1. Heard counsel for applicant as well as counsel for respondents – original accused. Perused application. Also considered the copy of roznama of the matter concerned in which the impugned order has been passed acquitting the accused persons. There is arguable case. Leave is granted. Application is converted into appeal.

2. Appeal is **admitted**.

3. Mr. Thote, learned counsel dispenses with service for respondents after admission of appeal. With consent of counsel for both sides, the appeal is taken up for hearing finally.

4. The counsel for the applicant – original complainant refers to the complaint, copy of which is at Exhibit A. According to him, the trial Court had called report from police and thereafter found that there was offence under sections 323, 504, 506 and 447 of the Indian Penal Code and hence, process was issued. The counsel submits that, the complainant and accused were appearing in the trial Court and plea was recorded on 16.8.2013. Thereafter the matter was posted for evidence and

later, for some reasons or the other, it was adjourned and then on 3.3.2014, when complainant and her Advocate did not reach the Court Hall when the matter was called out, the Court suddenly dismissed the complaint. The submission is that, there was no justification for dismissal and opportunity should have been given to the complainant to bring on record the evidence she wanted. Learned counsel submits that the impugned order is unjustified and needs to be quashed and set aside.

5. Against this, learned counsel for the respondents – accused submitted that the roznama shows that, on earlier two occasions also the complainant was absent and on 3.3.2014 also the complainant and her Advocate were not there and so, the trial Court rightly passed the order acquitting the accused. The counsel refers to the facts of the matter to submit that there was no justification for the complainant to file the complaint itself and that no case was made out. According to him, the complaint filed was false.

6. Perusal of the roznama shows that, the plea was recorded on 16.8.2013. On next date of 20.9.2013, the complainant, accused and their Advocates were present. The Court was busy in another matter and so the matter was

adjourned to 16.11.2013. On 16.11.2013, the complainant was absent and the accused was present with Advocate. The roznama does not give any further details and the matter was posted for evidence on 20.12.2013. On 20.12.2013, the complainant, accused No.1 and his Advocate were present. There was application for personal exemption of accused No.2 to 5 and the application was accepted and the matter was again adjourned to evidence to 30.1.2014. On 30.1.2014, the complainant and accused No.1 and 3 were present with their Advocates. Thereafter, the roznama is not legible in the certified copy, but it appears that, there was some application for exemption of presence of accused. On the adjourned date of 3.3.2014, the present impugned order has been passed, which reads as under :

"Accused no.1 and 2 along with their Advocate N.B. Sonwane are present and on behalf of accused no.3 and 4 exemption application has been filed on record and same has been granted.

Complainant and her Advocate absent when called repeatedly till 12.45 P.M. From perusal of roznama and record of the case shows plea of accused Exh.28 recorded on 16.08.2013. But thereafter complainant has not entered into the witness box and adduced the evidence. Moreover today her Advocate is also absent. No adjournment application is filed on record. No ground to adjourn the proceeding on next date. Hence

complaint is dismissed and accused are acquitted under section 323, 504, 447, 506 read with 34 of the Indian Penal Code."

7. Learned counsel for the appellant submits that, the complainant, on the concerned date, reached the Court by about 2.00 p.m. On that date, her Advocate was not present in the Court. When she went to the Court, she found that the present impugned order had already been passed. For absence of her Advocate, she should not suffer. The learned counsel submits that, in the interest of justice the order needs to be set aside.

8. Looking to the roznama, where, when both the sides with Advocates were present, the Court adjourned the matter on the basis that it was busy in other matter on 20.9.2013 and on subsequent dates there was no stress laid that the personal exemption would not be granted or that the evidence must be lead or in default, adverse orders would be passed and the matter was liberally adjourned. Then, suddenly on 3.3.2014 dismissing the complaint was not justified when on earlier date 30.1.2014, complainant and her Advocate were present while some accused were absent. In the circumstances of the matter, the order passed cannot be said to be legal and justified. It is necessary that substantial justice should not only be done but it

should also appear to have been done. If adverse steps are taken against a party, record should show that the party was negligent or trying to protract. What appears from present matter is like taking a chance when complainant is absent, to dismiss. This would not be appropriate. It is surprising that for absence, complainant was made to suffer while on the same date of 3.3.2014, accused No.3 and 4 were also absent and they were exempted as can be seen from roznama.

9. For such reasons, the appeal is allowed. The impugned order is not maintainable. The order dated 3.3.2014 is quashed and set aside. The original complaint is restored to its original number and stage. Parties are directed to appear before the trial Court on 4th March 2015. The trial Court is directed to expedite the hearing of the criminal case. Learned counsel for both sides agree to co-operate.

(A.I.S. CHEEMA, J.)