

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CRI.APPEAL NO.347 of 2014

CRIMINAL APPEAL NO. 347 OF 2014

Uday S/o Charles Battise,
Age major, Occ. Business,
R/o. Shantipura, Aurangabad.

..Applicant / appellant.

VERSUS

Jayawant Suryabhan Mote,
Age major, Occu. Business,
Prop./o Ms. Yogesh Automobiles
R/o. Plot No.8, Nanda-deep Housing
Society, C.I.D.C.O., Aurangabad.

.. Respondent.

Mr. Ajit B. Kadethankar, Advocate for Appellant;
Mr. P.S. Magar, Advocate for Respondent.

CORAM : P.R.BORA, J.
Dated : September 16, 2015

PER COURT :-

1) Being aggrieved by the judgment and order dated 5th September, 2012 passed by the 7th Judicial Magistrate, First Class, Aurangabad in Special Criminal Case No. 4928/2010, the original complainant has filed the present appeal. The learned Magistrate has dismissed the aforesaid complaint for want of prosecution and has thereby acquitted the accused therein i.e. the respondent in the present Appeal.

2) Learned Counsel for the appellant submitted that, because of the acute sickness of the parents of the appellant /

agp/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(2) CRI.APPEAL NO.347 of 2014

complainant, he could not attend the complaint filed by him before the trial Court. Learned Counsel further submitted that, during the pendency of the aforesaid complaint, mother of the complainant ultimately died. Learned Counsel further submitted that, the father of the complainant is 82 years old and requires constant attention. In the circumstances, according to the appellant he could not attend the proceedings before the trial Court, and also could not properly instruct the Counsel appearing for him before the Trial Court. Learned Counsel submitted that, in the aforesaid circumstances, the complaint has been dismissed by the learned Magistrate for non prosecution. Learned Counsel further submitted that, looking to the peculiar facts of the present case, the present appellant needs to be given an opportunity to contest the matter on merits. Learned Counsel further submitted that, the appellant is ready to abide by the conditions which may be imposed by this Court. Learned Counsel further submitted that, the appellant is also ready to compensate the Respondent herein i.e. the original accused by paying adequate cost.

3) Learned Counsel appearing for the Respondent has strongly opposed the submissions made on behalf of the appellant. Learned Counsel submitted that, ample opportunities were given to the appellant / complainant and despite that the complainant did not proceed with the complaint and ultimately the learned Magistrate was constrained to dismiss the complaint for want of prosecution. Learned Counsel submitted that the mother of the

agp/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(3) CRI.APPEAL NO.347 of 2014

appellant / complainant died on 23rd March, 2012, whereas the complaint has been dismissed on 5th September, 2012. Learned Counsel submitted that, no explanation is coming forth from the side of the appellant / complainant showing any cogent reasons for his absence during the said period. Learned Counsel submitted that, the well reasoned order has been passed by the learned Magistrate, which does not call for any interference. Learned Counsel has relied upon the Judgment of the Apex Court in the case of **S.Rama Krishna Vs. S. Rami Reddy (deceased by L.Rs) and Ors. (AIR 2008 SUPREME COURT 2066)**. Learned Counsel submitted that, in the similar facts situation the Hon'ble Apex Court held that, the order passed by the Magistrate dismissing the complaint for want of prosecution should not have been interfered with by the High Court.

4) I have carefully considered the submissions advanced by both the parties, and I have also gone through the material placed on record. It appears that, the appellant / complainant could not take the steps and proceed with the matter because of the illness of his parents. The complainant has submitted on oath that, his mother was bed ridden and was seriously ill during the relevant period. It has also been stated that, the father of the complainant, who is retired ex-serviceman, is 82 years old and he also requires constant attention.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(4) CRI.APPEAL NO.347 of 2014

5. Apparently, there seems no reason to doubt the averments made on oath by the appellant complainant. It is quite possible that, in the circumstances as stated by the appellant, he gave preference to ill-health of his parents instead of paying attention to the Court proceeding. Consequently, the proceeding before the trial Court was dismissed for want of prosecution by the said Court. Record shows that the summons could not be served on the accused in the said criminal complaint for want of necessary steps to be taken by the complainant therein i.e. the present appellant. Now, the said accused has put his appearance in the present appeal. The appellant complainant has also undertaken to expeditiously proceed with the criminal complaint filed by him. As stated above, the original complaint was not proceeded further for want of appearance of the accused therein. Now, that hurdle is removed. In such circumstances, it appears to me that the appellant complainant needs to be extended with an opportunity to contest his matter on merits. No prejudice is likely to be caused to the respondent if the matter is remitted back to the trial Court since he will get full opportunity to defend the said criminal prosecution. I am, therefore, inclined to allow the present appeal and remit back the matter to the trial Court for its decision on merits.

6. There cannot be any dispute regarding the observations made and the conclusions arrived at by the Hon'ble

agp/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(5) CRI.APPEAL NO.347 of 2014

Apex Court in the case of S.Rama Krishna, cited supra, relied upon by the respondent, however, the said judgment may not apply to the facts of the present case.

7. In the result, the following order:

ORDER

- i) The Criminal Appeal (No.347/2014) is allowed.
- ii) Special Criminal Case No.4928/2010, shall stand restored to the file of 7th Judicial Magistrate, First Class, Aurangabad.
- iii) The parties are directed to appear before the trial Court on 28th September 2015.
- iv) The appellant complainant shall expeditiously proceed with the hearing of the criminal complaint filed by him without seeking any adjournment.
- v) The appellant complainant shall pay Rs.5,000/- (Rs. five thousand) to the respondent towards costs of this appeal.
- vi) Inform the trial Court accordingly.

(P.R.BORA, J.)

...