

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO.4152 OF 2014**

Manoj s/o Shankar Wasaikar,
Age-48 years, Occu:Agri. & Business,
R/o-Chavan Chowk, Nandurbar,
Tq. & Dist-Nandurbar

...APPLICANT
(Orig. Complainant)

VERSUS

Narendra Shankar Wasaikar,
Age-55 years, Occu:Business,
R/o-Nilendra Bangalow,
Sawata Nagar, Sangameshwar,
Malegaon, Tq-Malegaon,
Dist-Nashik.

...RESPONDENT
(Orig. Accused)

...

Mr. Ravindra S. Shinde Advocate for Applicant.
Mr. V.P. Raje Advocate h/f. Mr. C.R. Deshpande
Advocate for Respondent.

...

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

DATE : 5TH FEBRUARY, 2015

ORAL ORDER :

1. Heard learned counsel for Applicant -
original complainant and learned counsel for
Respondent - original accused. Perused record.

2. Learned counsel for the Applicant is submitting that the complainant had filed the criminal case S.T.C. No.491 of 2012 for defamation against the Respondent and process was issued. According to him, when the matter came up for evidence, on the same day the other case filed by Respondent having Regular Criminal Case No.201 of 2013 was also listed. His argument is that the present Applicant and his Advocate were attending that other matter in R.C.C. No.201 of 2013 when the present matter (S.T.C. No.491 of 2012) before the Court which both Courts being in same campus, came up and the trial Court dismissed the complaint. He is submitting that the Applicant may be given an opportunity to contest the matter on merits and any terms may be laid which the Applicant would follow.

3. The learned counsel for Respondent is submitting that the Respondent - original accused

was forced to come from Malegaon, Dist-Nashik to Nandurbar and he was travelling the distance on each and every date and if the Roznama is perused, it can be seen that the Respondent was being harassed and the trial Court was justified, in the circumstances of the matter, to dismiss the summary trial.

4. There is no dispute regarding the fact that the parties are brothers. S.T.C. No.491 of 2012 was filed earlier claiming defamation as it is claimed that the Respondent published certain news in the newspaper.

5. If the Roznama of R.C.C. No.201 of 2013 which has been filed on record is perused, it shows that on 11th June 2014 both the parties along with their Advocates were present before that Court of C.J.M. There is no dispute regarding the fact that in the same campus S.T.C. No.491 of 2012 was listed on same day before J.M.F.C. Court

No.2. If the Roznama of S.T.C. No.491 of 2012 with which I am concerned is perused, it shows that on 11th June 2014 the present Applicant who was complainant called repeatedly, was absent and when called even his Advocate was not present, while Respondent - accused and his Advocate were present. The Respondent after attending that other matter also attended the present matter. But, Applicant and his Advocate did not attend.

6. The trial Court passed following order:

"ORDER BELOW EXH. 1 IN S.T.C. NO.491/2012

01. Perused the record. It appears that, on 11-06-2013 process was issued against the accused for the offence punishable u/sec. 500 & 501 of I.P.C. Thereafter, accused appeared and after released him on bail my learned predecessor had recorded particulars of offence/Plea on 04-09-2013.

02. Since then the complainant was called to lead the evidence. Record shows that,

thereafter complainant has moved present application for adjournment at Exh. 28, 29, 32 & 33. At Exh.33 detailed order was passed and last chance was granted to the complainant to lead his evidence. Today, complainant was called repeatedly till 1.45 p.m. but he remained absent. His Ld. advocate Mr. P.D. Patil had come but he has not moved any application on record till now. When again the Ld. Advocate was called upon he remained absent.

03. Accused and his Ld. Advocate Shri Ansari are present before the Court. They submits that, they are attending the Court on each date and they comes from Malegaon, Dist-Nashik. Matter is for hearing but the applications moved on record by the complainant shows that he is not interested in proceeding with the matter. In the facts and circumstances I pass following order:

ORDER

1. The complaint is dismissed U/sec.256 of Cr.P.C."

7. If the order is read along with Roznama, it can be seen that the matter was being listed for evidence and earlier on 18th December 2013 cost of Rs.500/- was imposed on the complainant for taking adjournment. On subsequent date of 7th April 2014 also when again adjournment was sought, cost of Rs.1000/- was imposed as per Roznama. The matter was adjourned to 28th April 2014 and even on that day the adjournment was sought vide Exhibit 33. The above order of the J.M.F.C. refers to the detailed order which he passed below Exhibit 33 giving last chance. On next date of 11th June 2014, the trial Court recorded that the Advocate of Applicant - complainant earlier had come to the Court but did not make any application on record and subsequently preferred to remain absent. The Complainant was also absent. For such reasons, the trial Court concluded that the complainant was not interested in the proceeding and dismissed the complaint.

8. It is quite apparent on the face of record that the Applicant-complainant was given sufficient opportunities by the trial Court to lead the evidence. In spite of imposing costs on two occasions and on third occasion cautioning, the Applicant-complainant did not take care to ensure that evidence was led in the matter which was summary in nature even on the fourth chance. The counsel for Respondent is submitting that Respondent-accused was required to attend the matter going from Malegaon which is at the distance of more than 100 K.M.s. At this stage, learned counsel for Applicant orally submits that the Respondent is an Advocate and he was practicing also at Nandurbar. However, this was not an aspect which was before the trial Court. Applicant himself had in Complaint Exhibit "A" arrayed Respondent as in Business. Even the trial Court took notice of the fact that the accused was required to attend the Court coming from Malegaon.

9. When the Courts are so heavily burdened with many matters, inspite of opportunities if the party does not take advantage, there can be no justification to simply keep adjourning the matter. Courts are not interested in imposing or recovering costs. What they are interested in is that matters should be conducted.

10. In the circumstances of the matter, no case is made out to interfere with the order passed by the trial Court. When there is order passed, which has the effect of the acquittal, there is no reason for this Court to interfere in present set of facts.

11. The Criminal Application stands rejected.

[A.I.S.CHEEMA, J.]