

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.296 OF 2015

Arun Ramdev Modi	..Appellant
<i>Versus</i>	
The State of Maharashtra and Anr.	..Respondents

....
Ms. Mallika Ingale, Advocate for the Appellant.
Mr. A.R. Patil, APP, for the Respondent.
....

CORAM : A. R. JOSHI, J.

DATE : 4th SEPTEMBER, 2015

P.C.

1. Today learned Counsel for the appellant filed an affidavit of service on the respondent by RPAD. The acknowledgment slip is annexed to the affidavit. Earlier also it was noted by this Court on 13.7.2015 that the respondent / acquitted accused was tried to be served through courier service.

2. Now the respondent is already served through RPAD on 24.7.2015 as per the postal acknowledgment. Today, none present for the respondent No.2 / original acquitted accused. As such, present appeal is taken for final hearing as directed by

this Court on 13.7.2015. As such, appeal is admitted and learned Counsel for the applicant is heard.

3. The only point raised in the present appeal is that the impugned order of acquittal dated 18.10.2013 passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai is on the absence of the complainant and his Advocate before the Court on that day. Copy of the medical certificate is annexed to the present appeal memo which shows that the present appellant / original complainant was admitted in Ashoka General Hospital on 18.10.2013 and was discharged on 22.10.2013. 18.10.2013 is the date on which the impugned order of acquittal came to be passed. Though in the order it is mentioned that the complaint stand dismissed under Section 256 of Cr.P.C. and the accused is discharged, in the law this amounts to acquittal of the accused as contemplated by Section 256 of Cr.P.C..

4. In any event in the opinion of this Court, the dismissal of the complaint and consequent acquittal of the respondent accused is not on merits of the matter which is the private complaint filed by the complainant for taking action against the

present respondent for the offences punishable under Sections 323, 504 and 506 of IPC.

5. As such, in view of the above factual position the present appeal is allowed. The impugned judgment and order dated 18.10.2013 is quashed and set aside. Original complaint bearing No.1266/SS/2004 is restored to the file of the concerned M.M. Court. Directions are given to concerned trial Court to deal with said complaint case in accordance with law after securing presence of the respondent / accused to face the said matter. With these directions, present proceeding is disposed of. The appellant to appear before the concerned trial Court on 5.10.2015 on which day the trial Court shall proceed with the complaint case in view of the above directions.

(A. R. JOSHI, J.)

Deshmane (PS)