

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.108 OF 2014

M/s. Mosaic Advertising and Marketing
Pvt. Ltd. ..Applicant

Versus

M/s. GSM Pvt. Ltd.
and others. ..Respondents

....

Mr. M.S. Mohite i/b. G.H. Keluskar, for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent-State.

....

CORAM : A. R. JOSHI, J.

DATE : 1st JULY, 2015

P.C.

1. Heard learned Counsel for the applicant/original complainant in this application for leave to file appeal challenging the judgment and order dated 20.1.2014 passed by the M.M. Court No.71, Mazgaon at Sewree, Mumbai.

2. Initially the present applicant / original complainant lodged the complaint in the year 2006 against the four accused i.e. company being accused No.1 and accused Nos.2 to 4 being Directors of the Company. Said complaint remained pending for service on the accused persons and as per the record since the

year 2007 to 2013, on nearly 35 times, the processes were issued against the accused persons includingailable warrants, non-ailable warrants and proclamation and also attachment warrants but without any success. Ultimately the accused No.3 was traced out and was brought before the Court. Initially he remained in custody. Then the trial Court felt it appropriate to proceed further with the complaint as against the accused No.3 and by keeping the case on dormant file as against accused Nos.2 and 4. However, an application was preferred before the trial Court asking for keeping the entire matter on dormant file as the applicant/complainant was not inclined to proceed further in the matter in piecemeal i.e. initially without taking up the matter against the accused No.3 and then subsequently on the arrest of accused Nos.2 and 4 against them. However, that mode of procedure was suggested by the trial Court mentioning that the complaint can be divided and the complaint as against accused Nos.2 and 4 can be kept on dormant file and the complaint can proceed as against the original accused No.3. Ultimately the complainant/present applicant did not follow the said directions of the Court but insisted on keeping the entire case on dormant file and consequently his application was

rejected by the Court and the impugned order came to be passed. However, it is strange that the said impugned order mentions that all the accused were acquitted as per Section 255(1) of Cr.P.C. and the complaint was put to an end. It is said order which is challenged in the present matter.

3. After going through the reasoning of the trial Court in the impugned order and after hearing learned Counsel for the applicant and after ascertaining the present factual position that even in the present matter the respondents could not be personally served but the service was effected by way of publication in the newspaper, it would be appropriate to set aside the impugned order and direct the learned trial Court to proceed further with the complaint by giving opportunity to the present applicant/complainant to lead evidence either in person orally or by filing his affidavit and then to deal with the matter in accordance with law, of course, after securing the presence of the original accused No.3 and also other accused persons if they could be found with reasonable diligence.

4. In view of the above, present application for leave is granted. Application for leave is accordingly disposed of.

Appeal be numbered. Appeal is also admitted and even the appeal is disposed of and the impugned order dated 20.1.2014 passed by the M.M., Court No.71, Mazgaon at Sewree, Mumbai is set aside. The complaint case No.4821/SS/2011 is restored to the file of the concerned Court with directions to the concerned Court to proceed further in the matter in view of the observations in earlier para. The applicant shall attend the concerned Court on 20.7.2015. The complaint shall be dealt in accordance with law and if feasible can be proceeded against all the accused if they can be traced out and can be brought before the Court within a reasonable time or to proceed further with the available accused and then to deal with the matter. Needless to mention that the learned Magistrate shall take all steps in accordance with law for securing presence of the accused persons and to proceed further with the matter. Appeal is allowed and accordingly disposed of.

(A. R. JOSHI, J.)