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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 354 OF 2015**

Manzar Ahsan s/o. Abubaker Shaikh

Applicant

Versus

Mr. Salim Haji Usman Khan and anr.

Respondents

Mr. Ram Upadhyay for the applicant.

Ms. V.S. Mhaispurkar, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 29, 2015**

P.C.

Admit. Heard finally.

2. Perused the impugned order. The impugned order has been passed under section 249 of Code of Criminal Procedure. Respondent no.1 was facing trial for the offence punishable under section 406, 420, 500 of Indian Penal Code in the court of Metropolitan Magistrate, Mazgaon, Mumbai. Applicant was the complainant in the said case. Applicant was absent on 17th December, 2014 and therefore, following order came to be passed by the learned Magistrate.

“Complainant is absent since long. Alleged offence is compoundable by law. It appears that complainant is not interested in prosecuting the complaint. Hence, complaint dismissed u/s. 249 of Cr.P.C. Accused is discharged from charge u/s. 406, 500 and 420 of I.P.C. The bail bond stands cancelled. Proceedings be closed.”

3. The grievance of the learned counsel for the applicant is that the

complaint should not have been dismissed by the learned Magistrate inasmuch as the applicant has been attending the court on almost all the dates of hearing. It is submitted that the discretion should not have been exercised in such arbitrary manner. Learned counsel for respondent no. 1 has submitted that the learned Magistrate has taken note of continuous absence of the applicant and therefore, complaint has been dismissed and respondent no.1 has been discharged.

4. I have gone through roznama of the case. It appears that the applicant was absent on 4th March, 2014, 21st July, 2014 and 6th September, 2014. In between there were two other dates when the learned Presiding Officer was on leave. The applicant appeared in the court on 13th October, 2014. It is noted that the Magistrate has earlier indicated that in case of absence of the applicant, the complaint would be dismissed. Since the applicant was present, the complaint came to be adjourned till 24th November, 2014. The learned Magistrate was on leave on 24th November, 2014. The complaint was adjourned to 17th December, 2014. The applicant was absent. It appears from the roznama that the applicant was in the habit of remaining absent. The offences punishable under sections 406, 420 and 500 are compoundable. The learned Magistrate has therefore, rightly exercised his discretion and has dismissed the complaint. I do not find any merit in the present application.

Criminal Application stands dismissed.

(JUDGE)