

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.210 OF 2015

M/s. S.D. Shethia and Co. Pvt. Ltd. ..Applicant
Versus
Smt. Bharati Bhagwan Thareli
wd/o. Late Bhagwan A. Thareli and others. ..Respondents

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Mr. Jehangir Minoo Khajotia, Advocate for the Applicant.
Mrs. Anamika Malhotra, APP, for the State.
Mr. Ashish U. Mishra, Advocate for Respondent Nos.1 to 5.

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CORAM : A. R. JOSHI, J.

DATE : 22nd JULY, 2015

P.C.

1. Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondent Nos.1 to 5 in the matter of offence punishable under Section 630 of the Companies Act. The original complaint was lodged by M/s. S.D. Shethia and Company Private Limited. It was then lodged through its Executive Officer Shri Nalin G.Desai. Subsequently said Shri Nalin G. Desai was substituted by Mr. Jagdish Madhusudan Shethia. Such substitution was done on 7.5.2014.

2. When the matter was before the concerned

Metropolitan Magistrate Court on 12.2.2015 the complainant and his Advocate were absent. Accused No.3 was present and the matter was fixed on 25.2.2015 for dismissal orders. On 25.2.2015 the complainant and his Advocate were present and filed an application for adjournment. Said application was rejected and order was passed below Exh.1 dismissing the complaint for want of prosecution. This order is challenged in the present appeal with application for leave.

3. The issue involved in the matter is very small inasmuch as whether the complaint filed by the M/s. S.D. Shethia & Co. Pvt. Ltd., a separate legal entity, could have been validly dismissed for want of prosecution on account of absence on 12.2.2015 and on rejection of application for adjournment made on 25.2.2015, on which date the complainant and his advocate were present.

4. Considering this small issue, in the opinion of this Court, the application for leave to file appeal is required to be allowed. Even the appeal, after admission, is required to be taken for final disposal as the dismissal of the complaint was for want of prosecution.

5. Learned Counsel for the respondents vehemently submitted that the present application for leave to file appeal is preferred by one Nalin G. Desai for and on behalf of the company M/s. S.D. Shethia & Co. Pvt. Ltd.. He drew attention of this Court towards the order of the Additional Chief Metropolitan Magistrate, 40th Court, Girgaon dated 7.5.2014 wherein it is specifically mentioned that said Nalin Desai, alleged employee of the company representing the company in the complaint, has been terminated in January, 2006 and by the said order dated 7.5.2014 Jagdish Sethia is allowed being the Director of the company to represent in C.C. No.1978/S/2003. By pointing out this it is submitted that the application now filed through Nalin G. Desai as an officer of the company is not maintainable and mischievous.

6. Counter to these arguments, learned Counsel for the appellant company produced copy of the order dated 29.6.2015 of the revisional court allowing the revision and thereby setting aside the order dated 7.5.2014 passed by the Additional CMM, 40th Court, Girgaon, Mumbai.

7. Whatever it might be the issue before the Court is not

who is to represent the company which is the complainant, whose complaint is dismissed, but, the issue is whether dismissal was rightful and legal and whether it could be interfered in the appeal. Admittedly, the dismissal was not on the merits of the case and apparently there was absence of the representative of the complainant company on 12.2.2015 and though the Advocate and the representative of the complainant company were present on 25.2.2015 their application for adjournment was rejected and the complaint was dismissed for want of prosecution. In the considered view of this Court this mode of dismissal of the complaint should not have been adopted by the trial Court and in that event, in the opinion of this Court after allowing the present appeal the matter is required to be remanded back to the trial Court to deal with the complaint bearing No.1978/SS/2003 in accordance with law. All the contentions of rival parties and specifically of the present respondent are kept open as to the maintainability of the complaint as filed by particular officer of the company. Rival parties to appear before the concerned trial Court on 24th August, 2015. The trial Court shall proceed further with the matter in view of the above directions in accordance with law

after giving an opportunity to both the parties of being heard on their contentions. Accordingly, present application for leave to appeal and also the present appeal are disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)