

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.360 OF 2015

Dilip Santaram Kamble ..Applicant
Versus
Manisha Suhas Bansode & Ors. ..Respondents

....
Mr. Prabhanjan Gujar, for the Applicant.
Mr. Tosif Chand Shaikh, for respondent Nos.1 to 3.
Mrs. P.P. Bhosale, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 1st OCTOBER, 2015

P.C.

1. Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondents in the matter of offences punishable under Sections 500, 501 and 502 read with 34 of IPC. The impugned order was passed on 13.5.2015 when the present applicant and his Advocate were absent before the trial Court. Said order reads thus :

“ORDER

1. Accused are acquitted of the offence punishable under sections 500, 501, 502 r/w 34 of IPC as per section 256 of Cr.P.C.
2. Bail bond stands cancelled.”

2. The above order was passed in Criminal Complaint No.23424/2013 preferred by the present applicant being Secretary of one Co-operative Society. The complaint was lodged against the present respondents alleging commission of offences punishable under Sections 500, 501 and 502 read with 34 of IPC. Initially on going through the complaint and verification of the complainant, the trial Court issued summons for the offences under Sections 500, 501 and 502 read with 34 of IPC on 16.12.2013. In that order it is specifically mentioned that *prima facie* case is made out for the said offences. Without mentioning all the details as to what happened on different dates, suffice it to say that all the respondents / accused appeared through their Advocate and gave respective bails. Lastly on 7.1.2015 the matter was fixed for recording of evidence prior to framing of charge as it being a summons triable complaint case preferred by the present applicant. Thereafter the matter was adjourned to 19.1.2015 on which day the complainant / present applicant was absent and the matter was adjourned for recording of evidence pre-charge. Thereafter it was adjourned to 18.2.2015 on which day the respondents and their Advocates and also the complainant / present applicant

and his Advocate were present. However, the matter was not proceeded and it was fixed for evidence before charge and it was adjourned to 7.3.2015. From this date onwards on four subsequent dates the present applicant and his Advocate remained absent. This is specifically mentioned in the Rozanama, copy of which is attached on page-41 to the present application. Said dates are 7.3.2015, 18.3.2015, 16.4.2015 and 13.5.2015. On all these dates, the respondents and their Advocate were present but present applicant/complainant and his Advocate were absent. As such, on 13.5.2015 till waiting 5:00 p.m., the trial Court dismissed the complaint by the impugned order, which is mentioned earlier.

3. Now the factual position remains that the entire complaint was dismissed for non-appearance of the original complainant for four dates and within the span of about two months from 7.3.2015 to 13.5.2015.

4. Apparently it was a complaint lodged at the behest of a co-operative society by the present applicant being its Secretary. Definitely the dispute between the parties and the allegations against the respondents were not adjudicated on merits.

Apparently the present applicant/complainant had not appeared before the trial Court in his personal capacity, but, he was taking the cause of the co-operative society of which he was the office bearer and had lodged the complaint for taking action against the respondents for the alleged defamation of the society.

5. In the considered view of this Court for the reasons mentioned in the present application and for the reason that only for two months none present for the complainant, it cannot be said that the entire case can be thrown without adjudication on merits of the matter. As such, present application is required to be allowed allowing the applicant to file appeal challenging the acquittal. Moreover, even considering the small issue involved as to dismissal of the entire criminal complaint for want of prosecution, said aspect shall also be put to rest by even allowing the appeal and remanding the matter back to the trial Court for adjudication in accordance with law.

6. In the result, present application for leave to file appeal is allowed. Appeal be numbered. The appeal is also admitted and allowed. The impugned order dated 13.5.2015 is quashed

and set aside and the entire complaint bearing No.23424 of 2013 is restored to the file of the concerned trial Court with directions to the trial Court to deal with the matter in accordance with law. Both the parties are directed to appear before the trial Court on 19.10.2015.

(A. R. JOSHI, J.)

Deshmane (PS)

CERTIFICATE

Certified to be true and correct copy of the original signed order.