



2. I have heard the learned counsel for the appellant. I have heard the learned counsel for the respondent No.1.

3. For the sake of convenience and clarity, the appellant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

4. Perusal of the impugned order shows that the matter had earlier appeared on board of the Magistrate on 03/02/2006, when the complainant was absent. The complainant's advocate was also absent. The accused was present before the Magistrate. The Magistrate passed an order that 'instead of dismissing the matter, in order to give one more opportunity to complainant to attend the Court, it was being adjourned to 23/02/2006'. However, in spite of these categorical observations made by the Magistrate, on 23/02/2006 also the complainant did not remain present before the Court. It, however, appears that his advocate was present at that time and gave an application for exemption.

5. It is submitted that the appellant could not remain present before the Magistrate on 23/02/2006 as he was not informed of the order passed by the Magistrate and was also not informed about the date 23/02/2006. It is submitted that a letter was issued by the appellant to the advocate, who was appearing in the Court of the Magistrate regarding the fact that he had not given proper intimation to the complainant and a copy of that letter is annexed to the appeal memo as Exh 'D'.

6. The learned counsel for the accused submitted that this letter has been written after about one and half year from the date of the order of acquittal passed by the Magistrate. According to him, no reliance can be placed on this letter.

7. Nevertheless, it would not be in the interest of justice to deprive the complainant of an opportunity to establish his case on merits. Though, therefore, I am inclined to grant one more opportunity to the complainant to prosecute the accused in accordance with law and to establish the complainant's case against him on merits, it must be observed that the complainant had not been following the appeal proceedings diligently. On four occasions the appeal was dismissed for default and later on restored. Though the learned counsel for the complainant submits that on two occasions the appeal was dismissed due to some misunderstanding, on specific questioning, she agrees that on two occasions it was the failure of the complainant's advocate to remain present before the Court that had led to the dismissal of the appeal.

8. I also find that the appeal was not filed within the period of limitation and that it was only after the prayer for condonation of delay in filing the appeal was granted, that the appeal came to be numbered. At that time, no costs were imposed on the complainant. This is what the learned counsel for the complainant states.

9. Thus the complainant is being dealt with leniently throughout. There are several lapses on the part of the complainant which have been condoned by this Court. Under these circumstances, though I am, as aforesaid, inclined to allow the appeal in order to grant an opportunity to the complainant to prosecute the accused on merits, I am of the opinion that the complainant should be saddled with appropriate costs.

10. In the result, the appeal is allowed.

11. The impugned order is set aside.

12. The complaint be restored to the file of the Magistrate, who shall proceed further with the matter in accordance with law.

13. The complainant shall pay costs of Rs.30,000/- to the respondent, by depositing the same in the Court of Magistrate within a period of one month from today.

14. It is made clear that the Magistrate shall not proceed with the complaint unless and until the costs are paid.

15. Appeal is disposed of in the aforesaid terms.

**(ABHAY M. THIPSAY J.)**