

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1487 OF 2007

- 1) Mahadeo S/O Sukhdeo Udan,
Age : 29 years,
- 2) Kashibai W/O Sukhdeo Udan,
Age : 65 years,
- 3) Mathurabai W/O Vishwambar Ugle,
Age : 32 years,
- 4) Kalidas S/O Sukhdeo Udan,
Age : 27 years,
- 5) Surekha W/O Kalidas Udan,
Age : 25 years,

All agriculturists and R/o Kandari,
Taluka Ghansavangi, District Jalna.

- 6) Narayan S/O Bhanudas Bobade,
Age : 40 years, Occupation agriculture,
- 7) Shardabai W/O Narayan Bobade,
Age : 40 years, Occupation agriculture,
- 8) Janardhan S/O Natha Chimane,
Age : 27 years, Occupation agriculture,

All R/o Tirthapuri, Taluka Ghansawangi,
District Jalna.

... APPLICANTS
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra.
(Copy served on the Public Prosecutor
High Court, Bench at Aurangabad).
- 2) Ashamati W/O Mahadeo Udan,
Age : 25 years, occupation household,
R/o Kandari, Taluka Ghansawangi,
at present Yenora, Taluka Partur
(P.S. Ashti), Dist. Jalna.
- 3) Sarjerao S/O Eknath Patte,
Age : 62 years, Occ. Agriculture,
R/o Belgaon, Tq. Georai,
District Beed (P.S. Georai).
- 4) Rameshwar S/O Sheshrao Dhere,
Age: 57 years, Occupation Agriculture,
R/o Bodkha, Taluka Ghansavangi,
District Jalna.

... **RESPONDENTS**

...
Mr. Joydeep Chatterjee, Advocate for the Applicants.
Mr. A. R. Kale, APP for Respondent No.1.

...

CORAM : **V. K. JADHAV, J.**
DATE : 22nd November, 2016.

ORAL JUDGMENT:

. Being aggrieved by the order passed by the Joint Judicial
Magistrate, Partur dated 3rd June, 2006, below Exhibit – 29 in R.C.C.
No.59 of 2002, and the judgment and order passed by the learned
Ad-hoc Additional Sessions Judge, Jalna dated 5th March, 2007, in
Criminal Revision Petition No.88 of 2006, confirming thereby the order

passed by the learned Magistrate below Exhibit – 29 as aforesaid, the original Accused preferred this criminal application.

2 Brief facts giving rise to the present criminal application are as follows:

Respondent No.2 had filed a private complaint bearing R.C.C. No.149 of 1999, before the Judicial Magistrate First Class, Partur against the present Applicants for having committed an offence punishable under Section 494 and 109 of the Indian Penal Code. On 13th September, 2000, Respondent No.2 / Complainant moved an application at Exhibit – 35 for withdrawal of the complaint on the ground that the parties had settled the matter out of the Court. The learned Magistrate has thus permitted the Complainant to withdraw the complaint and discharged the Applicants / Accused and closed the proceedings. On 13th February, 2002, Respondent No.2 / original Complainant had filed another complaint bearing R.C.C. No.59 of 2002 against the Applicants / Accused on the very same facts with the same allegations for having committed the same offence punishable under Sections 494 and 109 of the Indian Penal Code. It has mentioned in the complaint that on account of fraud

played by the Accused, she was forced to withdraw the first complaint. The learned Judicial Magistrate First Class, Partur by order dated 21st February, 2002, issued process against the Applicants / Accused for the offence punishable under Sections 494 and 109 of the Indian Penal Code. In response to the summons, the Applicants / Accused appeared before the Trial Court and moved an application Exhibit – 29 seeking dismissal of complaint. The learned Judicial Magistrate First Class by impugned order dated 3rd June, 2006, rejected the said application and the learned Ad-hoc Additional Sessions Judge by impugned order dated 5th March, 2007, confirmed the order passed by the learned Magistrate and dismissed the Criminal Revision Petition No.88 of 2006. Hence this criminal application.

3 The learned counsel for the Applicants / original Accused submits that in respect of the same incident with the same facts and allegations, the second complaint is not maintainable when the first complaint came to be withdrawn and the Applicants / Accused came to be discharged by the Magistrate. The learned counsel submits that the Court below has not considered that the first complaint was withdrawn on the ground that the matter is settled between the parties

out of the Court and the Applicants / Accused came to be discharged by the Magistrate. The learned counsel submits that the said discharge has an effect of acquittal and therefore, there is a bar of second complaint as provided under Section 300 of the Code of Criminal Procedure.

4 None present for Respondent Nos.2 to 4.

5 The learned APP for the Respondent No.1 / State submits that bar of Section 300 attracts only when a person has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence and while such conviction or acquittal remain in force, not liable to be tried again for the same offence. The learned APP submits that in the instant case, the complaint was withdrawn by the original Complainant on the ground that the matter was settled out of the Court. It is, thus, clear that the present Applicants / Accused were not tried by the competent Court vide first complaint and the Courts below have therefore, rightly held that the second complaint is maintainable.

6 On careful perusal of the record of first complaint, it

appears that Respondent No.2 / Complainant has filed an application Exhibit – 5 by contenting that the matter is settled between the parties out of the Court and therefore, she is not willing to proceed with the complaint. By order dated 13th September, 2000, the Magistrate has permitted to withdraw the complaint and accordingly discharged the Applicants / Accused and closed the proceedings. Though the second complaint is on the same facts and allegations filed by the same Complainant against the same Accused persons, in the first complaint, the Accused were not tried by the competent Court and therefore, the bar as provided under Section 300 of the Code of Criminal Procedure does not attract.

7 So far as the trial of summons case by the Magistrate, the withdrawal of complaint is permissible and on withdrawal of the complaint the Magistrate is bound to acquit the Accused against whom the complaint so withdrawn. However, identical provision is not made in respect of the trial of warrant cases by the Magistrate instituted otherwise on police report. Even assuming that no such withdrawal is permissible in case of warrant trial instituted otherwise on the police report, if it is withdrawn under the permission granted by

the Magistrate and if the same is not challenged by any of the parties, there cannot be any bar to the second complaint when the Complainant has come with a specific case that she withdrew the first complaint on account of fraud played on her by the Applicants / Accused.

8 In view of the above discussion, I do not find any substance in the criminal application. Hence the following order:

ORDER

- I. The criminal application, is hereby dismissed.
- II. Rule discharged.
- III. Criminal application is accordingly disposed of.

[V. K. JADHAV, J.]