

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

CRIMINAL APPEAL NO.368 OF 2015

Netaji s/o Bhagwanrao Taur
Age 22 years, Occ. Agri.,
R/o Gunj, Tq. Ghansawangi,
District Jalna

... APPELLANT
(Original Complainant)

VERSUS

1. The State of Maharashtra
through Chief Secretary,
Home Department,
Mantralaya Mumbai - 32
(Copy to be served on
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)
2. Bakulabai w/o Bhagwanrao Taur,
Age 73 years, Occ. Agri.,
R/o Bramhanwadi, Post Ashti,
(Dhotarjoda), Tq. Partur, Dist. Jalna
3. Yusufbhai Moti Pathan (Bagwan)
Talkhedkar, Age 58 years, Occ. Agri.,
R/o Phule Nagar (Bus Stand),
Majalgaon, Tq. Majalgaon,
District Beed.
4. Laxman s/o Madhavrao Jadhav,
Age 48 years, Occ. Agri.
5. Arjun s/o Madhavrao Jadhav,
Age 53 years, Occ. Agri.
6. Maharudra s/o Kashinath Jadhav,
Age 25 years, Occ. Agri.
7. Santosh s/o Sakharam Shinde
Age 25 years, Occ. Agri.

Nos.4 to 7 R/o Gunj,
Tq. Ghansawangi, District Jalna

8. Tukaram L. Jadhav,
Age 62 years, Occ. Nil (Retired Tahsildar)
Tq. Ghansawangi, District Jalna.
9. [(Gopichand) Govind s/o Rupchand Chavan,
Age 52 years, Occ. Service (Circle Inspector)
Tq. Ghansawangi, District Jalna
At present Selu Tahashil,
District Parbhani.]

**(Respondent No.9 abated as per
Court's order dated 1.4.2016)**

10. Ramdas s/o Haribhau Korde
Age 47 years, Occ. Service,
R/o Gunj (Talathi Sajja),
Tq. Ghansawangi, District Jalna.

... RESPONDENTS

.....
Shri V.M. Humbe, Advocate for appellant
Shri A.M. Phule, A.P.P. for State
Shri V.G. Mete, Advocate for respondent Nos.2 to 8 & 10
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 27th April, 2016.

Date of reserving judgment : 21st April 2016
Date of pronouncing judgment : 27th April 2016.

J U D G M E N T :

1. This appeal against acquittal has been filed by original complainant. Respondent Nos.2 to 10 (hereinafter referred to as accused) were arrayed as accused No.1 to 9

respectively in S.T.C. No.582/2009 before the Judicial Magistrate, First Class, Ghansawangi, District Jalna. The complaint was dismissed for want of taking steps by the complainant on 11.1.2012 and hence this appeal.

2. It is the case of the complainant that he has filed civil dispute against accused No.1 Bakulabai. It is argued that, the complainant claims to be adopted son of accused No.1 Bakulabai, aged about 70 years. The case of complainant is that, he has filed suit against accused No.1 and while the suit was pending, accused No.1 sold the disputed land to accused Nos.3 to 6. The concerned land had various fruit bearing trees and the purchasers cut down the trees since 13.4.2007 and on 13.5.2007, burnt off the cattle fodder depot in the field. Accused No.2 purchased the wood after trees were cut. The complainant filed complaint to police station as also before the Collector and Superintendent of Police. However, the authorities did not take any cognizance and so the private complaint came to be filed.

3. The copy of complaint shows that, accused No.7 is Tahsildar, accused No.8 was Circle Officer and accused No.9 is Talathi of the area concerned. According to the complaint,

complainant took up dispute with the accused No.7 to 9 and Collector, Superintendent of Police, Forest officers, but they did not take any "effective" steps and police patil only did panchanama. Thus, accused Nos.7 to 9 were made accused.

4. The appellant – complainant claims that summons were issued to the accused persons and matter was for awaiting summons on 12.7.2011 and 27.9.2011 and for steps on 30.11.2011. Trial Court dismissed the complaint on 11.1.2012 for want of prosecution, observing that complainant was absent many times and the accused came to be acquitted.

5. It is argued on behalf of the complainant by the learned counsel that the trial Court should not have dismissed the complaint. According to the learned counsel, the complaint was for awaiting report of service of summons to accused Nos.2 and 8 and was then fixed for steps. According to the counsel, if the report of summons sent earlier had not come back, the Judicial Magistrate, First Class did not indicate as to what steps complainant should take and thus, according to him, the complaint should not have been dismissed only because the complainant and his Advocate were absent when

it was kept for taking steps.

6. Against this, the learned counsel for respondents-accused submitted that, the matter was a summary case, which was pending since 5.6.2007 and even in 2012, service of the accused had not been completed. Some of the accused served were attending Court since long. Accused No.2 had been arrayed as accused claiming that he was the purchaser of the wood of the trees cut and accused No.8 was Circle Officer. Even regarding accused No.8, who was Circle officer, service was not completed and other accused were being put to trouble. According to the counsel, the impugned order was correctly passed.

7. Copy of roznama available shows that, the complaint was filed on 5.6.2007. The Judicial Magistrate, First Class called report under Section 202 and summons were issued on 28.7.2009. In between, the matter was fixed on various dates. After the summons were issued on 28.7.2009, the service was got completed on other accused except accused No.2 Yusufbhai and accused No.8 Gopichand. The other accused were attending the proceedings. On 3.5.2011, summons was directed to be re-issued. It was actually issued

on 12.5.2011 and was returnable on 12.7.2011. Thus, a time of two months was prescribed for return of summons. When the matter came up on 12.7.2011, the complainant was absent. The return of summons was awaited and matter was posted after more than another two months for 27.9.2011. On 27.9.2011, the complainant was absent and matter was adjourned for awaiting summons and for orders on 30.11.2011. Thus, for almost six months from 12.5.2011, summons had not come back and the Court posted the matter for orders. On the adjourned date of 30.11.2011, complainant as well as his Advocate were absent and the Court ordered and posted the matter for taking steps as per roznama. The matter was posted to 11.1.2012. On that day also the complainant and his Advocate were absent. The Court passed orders that the roznama shows that complainant and his Advocate were absent since long and no steps had been taken since many dates. The Court recorded that the complainant did not appear to be interested in prosecuting the matter and dismissed the complaint for want of prosecution. The Court proceeded under Section 256 and acquitted the accused persons.

8. The learned counsel for the appellant –

complainant has submitted that the Court did not say as to what steps the complainant should take. According to him, if the return of summons was being awaited, the complainant had nothing to do in it. I am not impressed by these submissions. It was a summary case, which cannot be allowed to protract for so many years without even taking effective steps to get the service complete. In practice and procedure, there are various steps a complainant can take to ensure that service is complete on the accused. If on 12.5.2011, summons had been issued with returnable date of 12.7.2011 and till that date if the summons had not returned, even if one date was given awaiting the same, it is futile to let the matter get adjourned from time to time awaiting summons as the returnable date once crossed the same summons cannot be served thereafter without the returnable date being renewed. In such contingency, an alert complainant would seek re-issue of summons. The complainant can seek reminder to the police station. There is no reason why complainant could not have sought re-issue of summons and taken Hamdast to the police station and assisted the police to locate the respondent – accused and get the service completed. This becomes more necessary when the other accused had been served and were attending the Court and

getting harassed as the matter was getting prolonged for want of effective steps. What steps the complainant should take is basically responsibility and prerogative of the complainant. He has to seek assistance from the Court. It is not that the complainant can just pay the process fee and sit back without taking any steps. It is not for the Judicial Magistrate, First Class to advise complainant as to what steps he should take. The concern of the Court is that the matter should progress and the reason why I have observed that it is for the complainant to pursue and take effective steps because even the police at times need assistance to locate the accused whom the complainant knows best. In this matter, accused No.8 was arrayed as "Gopichand" Rupchand Chavan, said to be Circle Officer. As it has turned out in the course of appeal when summons was sent to this accused, it turned out that there was no such person as "Gopichand" Rupchand Chavan, and there was only one "Govind" Rupchand Chavan, who had already expired. Consequently, name of original accused No.8, arrayed as respondent No.9 in this appeal was bracketed by appellant as the appeal abated against him. Had effective steps been taken in trial Court, this would have been revealed in trial Court itself.

9. Looking to the roznama and after having heard counsel for both sides, I do not find that fault can be found with the order passed by the Judicial Magistrate, First Class, resorting to Section 256 of the Code of Criminal Procedure. The matter was posted for complainant to take steps. As the complainant failed to take steps, the Court was justified in dismissing such old summary criminal case.

10. Normally, cause of justice cannot be allowed to suffer on mere technicalities and opportunities are given. Keeping this in view, I had called upon the counsel for both sides to submit as to what is the case of the complainant to ensure that good cause should not suffer. As is the case of complainant in complaint to Judicial Magistrate, First Class and repeated by the complainant in the appeal memo as well as arguments, it can be seen that, there is a civil suit pending between the complainant and accused No.1, an old lady. Accused No.2 Yusufbhai, who remained to be served, was arrayed as a person who purchased the wood cut by accused Nos.3 to 6. Although complainant claimed that he made complaints to accused Nos.7 to 9, as well as Collector, Superintendent of Police and Forest officers, the Collector, Superintendent of Police and Forest officials were not arrayed

as accused, but the Tahsildar, Circle Officer and Talathi were put up as accused and the allegation was only that, in spite of complaint, they had not taken effective steps. Apparently, Section 197 of the Code of Criminal Procedure has been forgotten by everybody. Looking to these factors, prima facie I did not find that there is any good cause which would get defeated by the impugned dismissal order, which otherwise is correct looking to the manner in which the complainant was pursuing the complaint.

11. The view taken by the Judicial Magistrate, First Class, in the facts and circumstances to dismiss the complaint and acquit the accused is a possible view. This appeal being against acquittal, I do not find any reason to interfere.

12. The appeal is dismissed.

(A.I.S. CHEEMA, J.)