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

CRIMINAL WRIT PETITION NO.535 OF 2016

Kevalbai D/o Kondiba Kadam,
Age: 52 years, Occu: Household
& Agril.

R/o : Mogha, Tq. Ahmedpur,
Dist. Latur

..PETITIONER

VERSUS

Kashinath S/o Shankar Kadam,
Age: 52 years, Occu: Agril.,
R/o : Mogha, Tq. Ahmedpur,
Dist. Latur

..RESPONDENT

Mr K. T. Shirurkar, Advocate for petitioner;
Mr Jayant R. Patil, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 22nd August, 2016

ORDER :

Present petition is filed by the complainant to Regular Criminal Case No. 89 of 2009 initiated following observations of learned Judicial Magistrate First Class, Ahmedpur, alleging that the respondent by assaulting her on 4th December, 2008, committed an offence punishable under Section 324, 325 and 506 of the Indian Penal

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Code. The verification was recorded on 29th April 2009.

2. Thereafter, learned Magistrate noted that since the applicant remained absent in the matter, dismissed the complaint on 31st October, 2014.

3. Criminal Revision No. 9 of 2014 on the file of learned District and Sessions Judge, Ahmedpur also suffered rejection vide judgment and order dated 1st January, 2016. As such, present writ petition.

4. Learned Counsel for petitioner submits that the petitioner has deposited costs of Rs. 5,000/- pursuant to the order passed by this Court on 28th June, 2016. According to him, the complaint of the petitioner could have been decided by the learned Magistrate on merits and not by one line order of dismissal for want of prosecution because of absence of the petitioner. He would then submit that the Court below was duty bound to deal with

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the issue of the petitioner, who was a lady in distress, by dwelling upon on the merits of the matter.

5. According to him, the Court below while deciding the application, committed an error apparent on the face of record, which calls for interference in extra-ordinary writ jurisdiction.

6. Mr patil, learned Counsel for respondent – accused would submit that the very conduct of the petitioner as apparent from the observations made by the revisional Court, speaks voluminous about mode and manner and seriousness with which the petitioner was persuading the proceedings before the Magistrate. He would then urge that the respondent has suffered for last about 7 years because of the pendency of the complaint against him, as the petitioner was not diligent in pursuing the complaint and it was luxury for her as could be noted from the dates. He prays that the petition be rejected.

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7. Having bestowed my thoughts to the submissions made, it is required to be noted the complaint was initiated for the alleged incident dated 4th December, 2009 and verification was recorded on 29th April, 2009.

8. Thereafter, the Court passed an order on 28th June, 2009 for issuance of process against the present respondent. It is claimed that from 3rd March, 2010 till 10th January, 2012, the petitioner-complainant remained absent and subsequently appeared on 24th October, 2013, seeking issuance of warrant. The Court, pursuant to the request of the petitioner, ordered issuance of warrant, however, the petitioner has not paid even process fee. The petitioner then remained absent from 22nd November, 2013 to 31st October, 2014, which has prompted the learned Magistrate to dismiss the complaint.

9. From the very conduct of the petitioner as

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could be noticed from the above referred events is that the petitioner who initiated the proceedings in the form of criminal complaint, has not taken same seriously but trying to delay the matter in luxurious manner. It is to be noted that the petitioner is trying to blame the Court for not deciding the proceeding on merits though the petitioner in law was duty bound to remain present before the Court for getting her matter decided on merit. The dates as are narrated, speak voluminous about the conduct of the petitioner. The respondent is required to suffer for more than seven years as there was hanging sword of prosecution pursuant to the complaint case initiated by the petitioner against him. Apart from above, the fact remains that while exercising extraordinary writ jurisdiction, particularly under Article 227 of the Constitution of India, this Court is also required to consider the conduct of the petitioner, which calls for exercising such power pursuant to the principle of equity.

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10. In my opinion, in extraordinary writ jurisdiction of this Court, for showing indulgence, no case is made out. As such, writ petition fails and stands dismissed.

11. The petitioner will be entitled to withdraw the amount of Rs.5000/- (Rs. Five thousand only) which is deposited in the Court.

(N.W. SAMBRE, J.)

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