

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 2586 OF 2015

Devendra S/o. Suresh Bhalerao,
Age : 49 years, Occu: Service,
Presently working as Tahsildar,
R/o. Mahabal, Ta. & Dist. Jalgaon.

... **APPLICANT**

VERSUS

1. The State of Maharashtra,
(Copy to be served on the Public
Prosecutor, High Court at Bombay,
Bench at Aurangabad.)
2. Shaikh Mansoor S/o Shaikh Faiyaz,
Age : Major, Occ. Labour,
R/o. Ganeshpuri Nagar,
Mehrun, Jalgaon.

... **RESPONDENTS**

...
Mr. N. E. Deshmukh, Advocate for Applicant.
Mr. K. S. Patil, APP for Respondent No.1 / State.
Respondent No.2 served and Absent.
...

CORAM : **INDIRA K. JAIN, J.**

DATE : 11th January, 2016.

JUDGMENT:

. Rule. Rule made returnable forthwith. Considering the
small issue involved in this matter, heard finally at the stage of

admission.

2 This application under Section 482 of the Code of Criminal Procedure is filed to quash complaint bearing SCC No.2582 of 2013 under Section 229-A read with 34 of the Indian Penal Code pending before the learned Judicial Magistrate, First Class, Jalgaon and the order dated 19th July, 2013 passed thereon by the learned Magistrate.

3 In nutshell, facts giving rise to the application may be stated as under:

Respondent No.2 filed RCC No.89 of 2008 for the offences punishable under Sections 466, 197 and 506 of the Indian Penal Code. Process was issued against Applicant / Accused. He appeared and was released on bail on execution of bond. Criminal case then proceeded further.

4 On 10th July, 2013, Accused remained absent. Complainant moved an application to issue non-bailable warrant against Applicant. The learned Magistrate issued the bailable warrant.

5 Thereafter, Respondent No.2 filed SCC No.2582 of 2013 alleging that Applicant without any reason remained absent on the given date and thereby committed an offence punishable under Section 229-A of the Indian Penal Code.

6 Learned counsel for Applicant submitted that as many as 83 cases have been filed by Respondent No.2 since 2011 against various officers. Applicant is working as Tahsildar at Jalgaon. Learned counsel would submit that proceedings in RCC No.89 of 2008 have been quashed by this Court vide order dated 9th October, 2014 in Criminal Application No.5386 of 2013 with other connected applications. Learned counsel would then submit that since main complaint has been quashed filing of subsequent complaint under Section 229-A of the Indian Penal Code is nothing but an abuse of process of law.

7 It is the contention of Applicant that on 10th July, 2013 itself an application Exhibit 47 was moved on his behalf seeking exemption from personal appearance as he was unable to attend the Court. As bailable warrant was issued, said application was not

entertained and it was filed. Learned counsel submits that on the next date i.e. 19th August, 2013, Applicant remained present in-person and submitted application Exhibit 48 seeking cancellation of bailable warrant issued on 10th July, 2013. The learned Magistrate accepted the explanation given by Applicant for cancellation of bailable warrant and without imposing any penalty cancelled the warrant.

8 Applicant alleged that Respondent No.2 is ill-famous in Jalgaon city for filing false cases against the members of civil society so as to extort money from them or coerce them to fall prey to his illegal demands. The learned counsel for Applicant submitted that with an intention to harass Applicant and many other officers 83 complaints came to be filed and 16 of them have been quashed and set aside.

9 In light of the submission across the bar, it is necessary to consider the scope of Section 229-A of the Indian Penal Code. It reads as under:

“229-A. Failure by person released on bail or bond to appear in Court.— Whoever, having been charged with an offence and released on bail or on

bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation. – The punishment under this section is –

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order forfeiture of the bond.”

10 A quick glance at the provisions of Section 229-A of the Indian Penal Code makes it clear that if a person charged with an offence and released on bail fails without sufficient cause to appear in the Court in accordance with the terms of bail or bond he has to face penal consequences as mentioned in the section.

11 In the case on hand RCC No.89 of 2008 was the main complaint. Proceedings in RCC No.89 of 2008 have been quashed by this Court vide order dated 9th October, 2014 in Criminal Application No.5386 of 2013 and connected applications. Since the proceedings in main complaint have been quashed, offence under

Section 229-A of the Indian Penal Code would not attract.

12 Another reason for non-applicability of Section 229-A of the Indian Penal Code in the present case is cancellation of bailable warrant by the learned Magistrate on accepting explanation given by Applicant to remain absent on 10th July, 2013. It is a matter of record that on the same day application was moved on behalf of Applicant for exemption from personal appearance. As order of issuance of bailable warrant was already passed, learned Magistrate did not entertain the said application. This negatives the contention of Complainant that without any cause Applicant deliberately remained absent on the said date.

13 In the above premise this Court is of the considered view that SCC No.2582 of 2013 is nothing but an abuse of process of law. Application therefore deserves to be allowed. Hence the following order

ORDER

- I. Criminal Application No.2586 of 2015 is allowed.

II. Rule is made absolute in terms of prayer clauses (A) and (B).

[INDIRA K. JAIN, J.]

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