

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

CRIMINAL APPEAL NO.654 OF 2015

Sunil s/o Baburao Mehtre
Age 43 years, Occ. Business,
R/o Takhur Colony, Gangakhed,
Tq. Gangakhed, District Parbhani ... APPELLANT
(Original Complainant)

VERSUS

Charansingh s/o Vithalsing Takhur
Age 45 years, Occu. Business
R/o Takhur Colony, Gangakhed,
Tq. Gangakhed, District Parbnhani ... RESPONDENT

.....
Shri V.C. Solshe, Advocate for appellant
Shri D.M. Shinde, Advocate for respondent
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CORAM: **A.I.S. CHEEMA, J.**

DATED: **7th April, 2016.**

ORAL JUDGMENT :

1. Heard learned counsel for the appellant and learned counsel for respondent.

2. The appeal is **admitted**. Mr. Shinde, learned counsel waives service of notice for respondent after admission of appeal. With the consent of learned counsel for the parties, the appeal is taken up for final hearing.

3. It is contended by the learned counsel for the appellant (original complainant) that the trial Court has acquitted the respondent (original accused) on 4.5.2013 without giving opportunity to the complainant to establish his case. It is submitted that, the complainant secured presence of accused after many efforts. The roznama shows that on some days both complainant and accused were absent and at times the complainant was present and accused was not there while there were times when accused was there and complainant was not there. It is stated that, on 4.5.2013 when the complaint was dismissed, the counsel for complainant had filed application Exh.35 because the complainant was required to go with his son to Pune for C.E.T. examination. The Court should have given opportunity instead of dismissing the complaint and acquitting the accused.

4. Counsel for respondent - accused submits that the

roznama shows that the complainant was not vigilant in conducting the matter and was remaining absent frequently. According to the counsel, the trial Court rightly found that the complainant was not interested in conducting the matter and rightly acquitted the accused.

5. Having gone through the matter and considering the roznama, it can be seen that the complaint was filed in 2007 and came up before the trial Court on various occasions. The complainant made efforts to secure presence of the accused. The accused appeared in the trial Court, it appears, for the first time on 29.4.2011. The roznama thereafter shows that, at times both the complainant as well as the accused were absent and at times present. On 2.1.2013, an application was moved for issuing non-bailable warrant for the accused and it was accepted. Thereafter the accused appeared and got the non-bailable warrant cancelled. The matter was then listed to 30.1.2013, when complainant and accused both were absent. Same was the condition on 2.3.2013. When the matter came up on 3.4.2013, application was moved on behalf of the complainant vide Exhibit 34, claiming that the complainant had gone out due to his business and time may be given. The trial Court recorded that,

when the matter was called out, the Advocate and complainant were not present. By that time, however, it appears, the accused had reached. The application of complainant was rejected. In roznama, however, it is mentioned that application of the accused has been rejected. The matter was kept for dismissal on 14.5.2013 when application Exh.45 came to be filed and the same was rejected.

6. I find that, the record shows that, the complainant as well as the accused both have not been promptly attending the matter, because of which the matter is protracted. On 4.5.2013, when the complainant had filed application Exh.35 seeking time as he had to go with his son to Pune for C.E.T. examination, it would be appropriate to give time, may be by imposing cost, so that on next date the pinch is felt. It would not be in the interest of justice to throw out the matter when the complainant and his Advocate are pursuing the matter in the Court. It is not a case that for multiple dates none is appearing.

7. In the interest of justice, I feel that one opportunity may be given to the complainant by imposing costs.

8. (A) For the above reasons, the appeal is allowed. The impugned order passed by the trial Court, dated 4.5.2013, passed below Exh.1 in S.C.C. No.108/2011 by 2nd Judicial Magistrate, First Class, Gangakhed is quashed and set aside, subject to costs of Rs.3000/- (Rupees three thousand) to be deposited in the trial Court. The costs, when deposited, shall be credited to the State.

(B) The complaint is restored to file subject to payment of costs.

10. The complainant and respondent shall appear before the trial Court on 25.4.2016 on or before which the costs should be paid. No separate notice may be issued to the complainant or accused for the date of 25.4.2016. Their absence on the said date will attract suitable action from the trial Court. If costs are not deposited on or before 25.4.2016, present order allowing appeal shall be treated as automatically withdrawn and appeal shall be treated as dismissed.

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