

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 309 OF 2012

Ms.Anupama S. Singh.

..Applicant.

vs.

Mr. Baijnath J. Singh and anr.

..Respondents.

Mr. S.K.Chaurasia for the Applicant.

Mr. A.K.Singh i/by M.S. Singh for Respondent No.1.

Smt. G.P. Mulekar, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 26th July, 2016

P.C.

Heard the learned counsel for the applicant and the learned counsel for respondent No.1.

2) By the present application under section 378(4) of the Code of Criminal Procedure the applicant is seeking leave to file an appeal against the order dated 18.2.2009 passed by the learned Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai thereby disposing of the complaint for want of prosecution by the applicant-complainant.

3) The record reveals that the complaint was filed by the applicant under Section 138 of the Negotiable Instruments Act before the Metropolitan Magistrate 31st Court, Vikhroli, Mumbai on 16.12.2000 bearing CC No No.602/SS/2005. The roznama of the said complaint bearing CC No.602/SS/2005 which was subsequently numbered as (602/SS/2005) by the said Court is annexed to the present application, reveals that as the accused-Respondent No.1

herein did not remain present in Court, bailable warrant was issued against him and the same was pending. The roznama further reveals that upto 9.4.2008, the applicant and his Advocate not regularly but intermittently attended the proceedings however, the applicant did not take any effective steps for execution of the warrant against respondent No.1. It further reveals that the complainant and his counsel constantly remained absent in the Trial Court from 26.6.2008. The Trial Court had directed the complainant to take steps in the matter however, the same was also not complied with. The Trial Court by an order dated 18.2.2009 dismissed the the complaint for want of prosecution as contemplated under Section 256 of the Code of Criminal Procedure.

4) Mr. Chaurasiya, the learned counsel appearing for the applicant submitted that the complainant was suffering from ailment since 26.6.2008 and therefore, could not attend the Court proceedings. He submitted that his instructing Advocate also did not attend the proceedings and therefore, the complaint was dismissed for non prosecution. He further submitted that for the fault of the Advocate his client should not suffer. In support of his contention he relied upon the Judgment passed by this Court in the case of *Mahendra Indermal Barana vs. Anil Shankar Joshi and another reported in 2004(1) Bom.C.R. (Cri.) 805*. It is to be noted here that the said decision of this Court relied upon by the learned counsel for the applicant deals with the situation where the plea of the accused was to be recorded on a particular day and there was not essential for the complainant to remain present before the Court. In those circumstances of the case the complaint was dismissed which was

restored by the Additional Sessions Judge in revision. .

In the present case the respondent No.1 was never served. There was no question of recording plea from 26.6.2008 to 18.2.2009 and therefore, the decision relied upon by the applicant is totally misplaced.

5) Reverting back to the facts of the present case, the record is absolutely silent that the applicant at any point of time had given instructions to his Advocate to attend the proceedings in his absence. There is no communication on record to that effect. In the absence of such a communication, it is very difficult to believe upon the words of the applicant that he had given instructions to his Advocate to attend the Court proceedings but the Advocate did not attend the same. It is by now settled position that a party/client cannot blame his Advocate in the absence of any cogent and material on record. It is equally the duty of the litigant/applicant to give instructions to the Advocate from time to time and pursue his/her case scrupulously. By merely putting the blame on the Advocate the case of the applicant will not improve. As stated earlier the complainant has consistently remained absent since 26.6.2008 before the Trial Court and in the circumstances, the Trial Court dismissed the said complaint on 18.2.2009. No ground at all for restoration of the complaint is made out in the application. I find no perversity or error in the order passed by the Trial Court. The present application is devoid of merits and is accordingly dismissed.

(A.S. GADKARI, J.)