

*Ladda*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3132 OF 2014

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Hemant Ghadigaonkar for the petitioner.
Smt. Anamika Malhotra, APP for the State.
None for the respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 2nd May, 2016

P.C.

1) Heard the learned counsel for the petitioner. As per the note put up by the Registry, the respondent no.2 is duly served. The respondent no.2 is absent though duly served.

2) By the present petition under Article 227 of the Constitution of India, the petitioner has questioned the correctness of the order passed below Exh.1 dated 10.6.2014 by the learned Metropolitan Magistrate, 26th Court, Borivali Mumbai in RCC No. 2420/SS/2012. As per the record, the petitioner filed the above stated complaint in the Court of the learned Metropolitan Magistrate, Borivali Mumbai under section 500 of the I.P.C. and has prayed in the said complaint that process may be issued for the offence committed under section 500 of the IPC against the respondent

no.2. The learned Trial Court dismissed the said complaint by the impugned order under section 203 of the Cr.P.C. on the ground that the complainant continuously remained absent before the Court and also failed to adduce the evidence about the veracity of the complaint. The learned counsel appearing for the petitioner submitted that, as a matter of fact, the complainant used to regularly remain present along with his advocate on the stipulated dates before the Trial Court and that he remained absent only on 12/3/2013. He submitted that on 26/4/2013, 10/1/2014, 7/3/2014 the complainant was present before the Court. In support of his contention he relied upon the roznama pertaining to the aforesaid RCC No. 2420/SS/2012.

3) I have perused the roznama. It appears to me that there is substance in the submission of the learned counsel for the petitioner. The learned trial Court in its order dated 10/6/2014 has made a reference to the order dated 12.3.2013 thereby directing the complainant to adduce more evidence and has further observed that since the complainant remained absent and did not adduce the evidence, veracity of the complaint is doubtful. It appears from the roznama that prior to passing of the impugned order dated 10.6.2014 the complainant was absent only on 24.9.2013 and in such circumstances the learned trial Court ought to have given an opportunity to the complainant to produce the evidence and ought not to have dismissed the complaint for a single default. The

learned Trial Court has further held that it did not find any prima facie case made against the accused. The learned counsel for the petitioner submitted that the learned trial Court ought to have read his complaint in its totality, which prima facie makes out a case as contemplated under section 500 of the IPC and either ought to have issued an order under section 156 (3) of Cr.P.C., or under section 202 of the Cr.P.C. for an enquiry, instead of straightway dismissing of the complaint under section 203 of the Cr.P.C. Prima facie it appears to me that the learned trial Court even without taking into consideration the pleadings in the complaint has reached to the said conclusion. Even otherwise if the learned Magistrate was intending to dismiss the complaint for non appearance of complainant the Magistrate ought not have embarked into the merits of the case thereby recording a finding for its dismissal.

4) In view of the above, I find that there is an error apparent on the face of the record in the impugned order passed by the trial Court dated 10.6.2014. The order is accordingly quashed and set aside. The complaint NO.2420/SS/2012 is restored to the file.

The petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)