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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.475 OF 2015

Himanshu Sheshrao Namle	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

None for the Applicant.

Ms.R.V.Newton, A.P.P for the Respondent-State

Mr.Chetan Akerkar, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 27th JULY, 2016

P.C. :

1. None appears for the applicant.

2. Hence, the Revision Application is dismissed for non-prosecution.

At 1.30 p.m.

3. Mr.Manish Bohra, learned counsel for the applicant mentioned the matter and states that he was busy in other Court and seeks recall of the order passed in the morning session.

4. Accordingly, the order dismissing the Revision Application for non-prosecution is recalled.
5. Heard learned Counsel for the applicant and learned counsel for respondent no.2 and learned APP.
6. Rule. Rule is made returnable with the consent of the parties and is taken up for final hearing forthwith. Learned APP waives service on behalf of Respondent – State.
7. By this application, the applicant has impugned the Judgment and Order dated 7th February, 2015, passed by the learned Special Judge for CBI, City Civil and Sessions Court, Greater Mumbai in Criminal Revision Application No.901 of 2014, by which the aforesaid Revision Application filed by the respondent no.2 (original complainant) came to be allowed and the order dated 28th April, 2014, passed by the 44th Metropolitan Magistrate Court, Andheri, Mumbai in C.C.No.2061/SS/2007, came to be quashed and set aside and the said case, being C.C.No.2061/SS/2007, came to be restored back to its original file.

8. Learned counsel for the applicant submitted that the order dated 28th April, 2014, passed by the 44th Metropolitan Magistrate Court, Andheri, Mumbai, was an order passed under Section 256 of the Code of Criminal Procedure, resulting in the acquittal of the applicant. He submitted that the Revision Application filed by the respondent no.2 – original complainant in the Sessions Court was misconceived and clearly not maintainable. He submitted that the appropriate remedy for the respondent no.2 – original complainant was to file an application seeking leave to file an appeal, against the said order dated 28th April, 2014, in view of the provisions of Section 256 of the Code of Criminal Procedure.

9. Learned Counsel for the respondent no.2 – original complainant, does not dispute the said position in law. He submitted that the Advocate in the Sessions Court was under a bonafide impression that the remedy available to the respondent no.2 – original complainant, was by filing a Revision Application, pursuant to which Criminal Revision Application No.901 of 2014, was filed against the said order of dismissal of respondent no.2's complaint vide order dated 28th April, 2014.

10. Perused the papers. The proceedings filed by the respondent no.2 – original complainant in the Sessions Court was completely misconceived inasmuch as, the order dated 28th April, 2014, dismissing the respondent no.2's complaint and acquitting the applicant was passed under Section 256 of Cr.PC. Hence, the remedy available to the respondent no.2 – original complainant was to file an application seeking leave to file Appeal and not by filing a Revision Application in the Sessions Court.

11. Accordingly, the application is allowed and the impugned Judgment and Order dated 7th February, 2015, passed by the learned Special Judge for CBI, City Civil and Sessions Court, Greater Mumbai in Criminal Revision Application No.901 of 2014, is quashed and set aside.

12. Rule is made absolute in above terms.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.