

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1873 OF 2016
(Sulbha w/o Subhash Agarwal Vs.Sadashiv s/o Namdeo Waghmare)

Mr.M.U.Shelke, learned counsel for the applicant.

(CORAM : V.L.ACHLIYA, J.)
DATE : 24/03/2017

PER COURT :

1. By the present application, the applicant is seeking leave to file an appeal against the impugned judgment and order passed by the Trial Court dismissing the complaint.

2. Heard the learned counsel for the applicant. Respondent, though served with the notice of application as well as the notice issued for final disposal of appeal, failed to appear.

3. The learned counsel for the applicant assailed the impugned order with contention that the order is not sustainable in law for the sole reason that the stage to exercise powers u/s 256 of the Cr.P.C. has not reached when the trial Court dismissed the complaint and acquitted the accused.

4. He submits that the complainant had filed complaint u/s 138

of the N.I.Act, which was posted for recording verification/statement of the complainant. Due to illness of the learned counsel for the complainant, the complainant as well as his counsel remained absent on the date on which the case was called out. By recording the absence of the complainant, the Trial Court has passed the order to dismiss the complaint and acquitted the accused. He submits that as the order of issuance of process was not passed in the matter, the complaint could not have been dismissed in exercise of powers u/s 256 of the Cr.P.C.

5. On due appreciation of submissions advanced, in the light of record and proceedings, there appears to be substance in the submissions advanced that the Trial Court has erred in exercising the powers u/s 256 of the Cr.P.C. in dismissing the complaint and acquitting the accused. No such stage has reached to exercise the powers u/s 256 of the Cr.P.C.

6. I am, therefore, inclined to allow the application. Application is allowed. Leave is granted. Appeal be registered and place for disposal at the stage of admission on 05/04/2017.

(V.L.ACHLIYA, J.)