

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

WRIT PETITION NO. 1344 OF 2016

Asha Yogesh Kanakia

..Petitioner

v/s.

State of Maharashtra & Ors.

..Respondents

Mr.M.G.Shukla for the Petitioner.

Mr.Prashant Jadhav, APP for the Respondent-State.

Mr.M.K.Dube for the Respondent Nos.2 to 4.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.  
DATED : NOVEMBER 10, 2017.**

**P.C.**

1. Rule. Rule made returnable forthwith. With consent taken for hearing.
2. The petitioner herein has challenged the Order dated 12<sup>th</sup> February, 2016 whereby the learned Addl. Sessions Judge, Gr. Bombay dismissed the Application No. 2185 of 2011 and thus confirmed the Order dated 5<sup>th</sup> July, 2011 passed by the learned Metropolitan Magistrate, 22<sup>nd</sup> Court, Andheri, Mumbai in CC No. 470/SS/2005 under Section 249 Cr.PC.
3. Heard Mr. Jadhav, learned Counsel for the petitioner and Mr.Dubey, learned Counsel for the respondent nos.2 to 4.
4. The petitioner had filed a complaint against the aforesaid

respondent for offences under Section 406 r/w. 420 of IPC. It appears that the petitioner/complainant failed to remain present and hence the learned Metropolitan Magistrate in exercise of powers under Section 249 Cr.P C. discharged the accused. The said order was challenged before the learned Sessions Judge in Misc.Application No. 2185/ 2011. The learned Addl. Sessions Judge has dismissed the said application only on the ground that the impugned order is legal and does not warrant interference.

5. At the outset, it may be mentioned that the offences alleged are non cognizable and are compoundable with permission of the Court. Furthermore, the records indicate that the complainant was not absent throughout the proceedings. The records reveal that the complainant had last appeared on 28<sup>th</sup> August 2009. On the previous dates of hearing, the accused were absent. The accused had also remained absent on the further dates of hearing. On 30<sup>th</sup> March, 2010 the complainant as well as the accused were absent. Considering all the above factors it is not the case where only the complainant was absent.

6. Both the parties have submitted that they will co-operate and will not prolong the trial. Statement accepted.

7. Considering the above facts, in my considered view, the petition

needs to be allowed. Hence the order:

I) The petition is allowed. The impugned order is set aside. Criminal Case No.470/SS/2005 is restored to the file. Both parties are directed to appear before the trial Court on 28<sup>th</sup> November, 2017 at 11.a.m.

ii) The learned Metropolitan Magistrate is directed to dispose of the matter as expeditiously as possible, and in any event within six months from the date of receipt of this order.

. Writ petition is accordingly disposed of.

**(ANUJA PRABHUDESSAI, J.)**