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

CRIMINAL APPLICATION NO. 430 OF 2017

Premasukh Kisandas Kataria

... Applicant

V/s.

Smt. Usha Vijay Londhe & Anr.

... Respondents

Mr. Mahesh Rawool for Applicant.

Ms. Sheetal Thakur i/b C.K.Legal for Respondent No.1.

Mr. S.H. Yadav, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 8th NOVEMBER 2017

P.C.:

1] By the present application under Section 482 of Cr. P.C., the applicant has impugned the Orders dated 1st March 2017 passed below Exhibit-47 and Exhibit-1 by the Judicial Magistrate First Class, Daund, District-Pune in R.C.C.No.212 of 2013 thereby rejecting the application for adjournment of the case fixed for cross-examination of the applicant, in evidence before charge.

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2] The record indicates that, the applicant is the original complainant in the aforesaid complaint and did not remain present for recording his evidence on various occasions and therefore by an Order below Exhibit-46 the learned Trial Court imposed cost of Rs.1000/- upon the applicant and had fixed the matter for recording further evidence on 1st March 2013. That on 1st March 2017 also the applicant did not remain present and his Advocate filed an application for adjournment. The said application came to be rejected by impugned Order passed below Exhibit-47 dated 1st March 2017. Despite rejecting the said application below Exhibit 47, the applicant did not remain present before the said Court till 3.45 p.m and therefore the Trial Court was constrained to struck off the evidence of the applicant recorded below Exhibit-44 by an Order below Exhibit-1 of even date.

3] Learned Counsel appearing for the applicant submitted that the applicant could not remain present before the Trial Court on stipulated dates due to certain circumstances which were beyond his control. He submitted that the applicant being the complainant is undoubtedly interested in persuing the said complaint and hereinafter will attend the Trial Court on dates necessary for his presence and shall participate in the

said proceedings without fail.

Learned Counsel appearing for the respondent No.1 vehemently opposed the application and submitted that the applicant has filed the said complaint only with a view to harass the respondent No.1 and it is the reason, the applicant is not attending the proceedings before the Trial Court. He further submitted that, if this Court is inclined to set aside the impugned Orders, the applicant may be saddled with exemplary costs.

4] Perused the record. The statement made by the learned Counsel for the applicant is accepted and the impugned Orders dated 1st March 2017 passed below Exhibit-47 and Exhibit-1 respectively in R.C.C.No.212 of 2013 pending on the file of Judicial Magistrate First Class, Daund, District-Pune are hereby quashed and set aside, subject to condition that the applicant shall deposit a cost of Rs.10,000/- (Rupees Ten Thousand) with the High Court Legal Aid Committee.

The payment of costs is condition precedent for setting aside the aforesaid Orders dated 1st March 2017.

5] Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)