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

**WRIT PETITION NO.902 OF 2017**

|                                   |                |
|-----------------------------------|----------------|
| Tukaram Baburao Hande             | ...Petitioner  |
| Versus                            |                |
| The State of Maharashtra and Anr. | ...Respondents |

Mr.S.M.Katkar i/b Ms.M.A.Devkar, for the Petitioner.

Mr.Yogesh Dabke, A.P.P for the Respondent No.1-State.

Mr.Ranvir Shekhawat i/b Raj Legal, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 17<sup>th</sup> JANUARY, 2018***

**P.C. :**

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Learned APP waives service on behalf of Respondent No.1- State. Mr.Shekhawat waives service on behalf of Respondent No.2.

3. By this petition, the petitioner has impugned the order dated 27<sup>th</sup> December, 2016, passed by the learned Additional Sessions Judge, Khed, Rajgurunagar, in Criminal Revision Application No.24 of 2015, by which the Respondent No.2's Revision Application came to be allowed and the impugned order dated 5<sup>th</sup> May, 2015, passed by the learned Judicial Magistrate First Class, Junnar, in Regular Criminal Case No.639 of 2001, (by which the complaint was dismissed for non-appearance of the complainant and the accused were discharged), was quashed and set aside.

4. Learned Counsel for the petitioner submitted that the order dated 5<sup>th</sup> May, 2015 dismissing the complaint for non-appearance of the complainant (respondent no.2) was an order passed under Section 256(1) of Code of Criminal Procedure and as such an order under Section 256(1) Cr.PC would necessarily have to be construed as an order of acquittal and not of discharge. He submitted that the appropriate remedy for the respondent no.2 was to file an application seeking leave to file appeal against the said order dated 5<sup>th</sup> May, 2015. He relied on the Judgment of this Court in the case of ***Raja s/o S.P.Upadhyay v/s State of Maharashtra, decided on 27<sup>th</sup> July, 1999***, in support of his submissions.

5. Learned Counsel for the respondent no.2 opposed the petition. He submitted that respondent no.2 will file an application seeking leave to file appeal against the said order dated 5<sup>th</sup> May, 2015, in view of the objection and in view of Section 256(1) Cr.PC.

6. Perused the papers. The learned Judicial Magistrate First Class, Junnar, was pleased to dismiss the complaint for non-appearance of the complainant (respondent no.2) and the accused were discharged. The order passed by the learned Magistrate was an order passed under Section 256(1) Cr.PC. Infact, since the order passed is an order under Section 256(1) Cr.PC, the dismissal of complaint will result in acquittal of the petitioner. In view of the same, the revision filed by the respondent no.2 in the Court of the learned Additional Sessions Judge, Khed, Rajgurunagar, was not maintainable. The appropriate remedy for respondent no.2 (complainant) is to challenge the order dated 5<sup>th</sup> May, 2015, by way of an appeal by Special Leave of the Court, under Section 378 (4) of Code of Criminal Procedure.

7. Learned Counsel for the respondent no.2 states that the

respondent no.2 will file an appeal in this Court under Section 378 (4) Cr.PC, within three weeks from today.

8. Learned Counsel for the petitioner states on instructions, that if an appeal is filed within the stipulated period alongwith an application for condonation of delay, the petitioner will not oppose the delay condonation application and will argue the appeal on merits. Statement accepted.

9. In view of the aforesaid, the impugned order dated 27<sup>th</sup> December, 2016, passed by the learned Additional Sessions Judge, Khed, Rajgurunagar, is quashed and set aside.

10. Rule is made absolute in above terms.

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

***REVATI MOHITE DERE, J.***