

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.109 OF 2016

Mrs. Vaishali Vidhyadhar Sarang

...Applicant

V/s.

Mrs. Sandhya Mahendra Naik & Ors.

...Respondents

.....

Mr. Swapnil Bhende i/b. Mr.A.S.Khandeparkar, Advocate for the Applicant.

None for respondent Nos.1 & 2.

Mr. S.V. Gavand, APP for respondent No.3/State.

....

CORAM : A.M.BADAR, J.

DATED : 12th OCTOBER 2018.

P.C. :

1. On 6th June 2018, the notice of final disposal was issued to the respondents considering the fact that the impugned order is passed under Section 256 of the Code of Criminal Procedure, dismissing the complaint alleging the offences punishable under Sections 403 and 406 read with Section 34 of the Indian Penal

Code. Today, the learned advocate appearing for respondent Nos.1 and 2 is absent. The learned APP appears for respondent No.3/State.

2. Heard. Leave, as prayed, is granted. Admit. Heard finally in view of notice of final disposal dated 6th June 2018.

3. The learned counsel appearing for the appellant/original complainant submits that the appellant/original complainant was regularly attending the learned trial Court since beginning. However, the respondents/original accused were not regular in attending the learned trial Court. Therefore, the complaint used to be adjourned time and again. The learned counsel further argued that even on 5th May 2015, the appellant/original complainant was present and the respondents/original accused were absent, and therefore, the complaint was adjourned to 21st July 2015. However, the appellant/original complainant had noted adjourned date incorrectly as 21st January 2015. That is how he remained absent on subsequent date resulting in dismissal of the complaint for want of prosecution.

4. I have considered the submissions so advanced and also

perused the record and proceedings. Duly sworn application and its contents and averments show that the appellant/original complainant noted adjourned date wrongly as 21st December 2015 and that is how, the complaint came to be dismissed on 1st October 2015.

5. Perusal of order-sheet maintained by the learned trial Court goes to show that the appellant/original complainant was regularly attending the dates of hearing before the learned trial Court. However, after 5th May 2015 he is marked absent on three occasions i.e. on 21st July 2015, 29th September 2015 and 1st October 2015. This absence is attributable certainly to the wrong noting of the adjourned date. That apart, even accused persons were also absent on these three dates.

6. Then the accused themselves were absent on 1st October 2015. The learned trial Court ought not to have dismissed the complaint for want of prosecution, considering the fact that the appellant/original complainant was regular in attending the learned trial Court in past prior to 5th May 2015.

7. In this view of the matter, the appeal deserves to be

allowed. Hence, the order.

- : ORDER : -

- i) The appeal is allowed.
- ii) The impugned order dated 1st October 2015 passed by the learned Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Mumbai, below Exhibit 1 in Case No.12/SW/2006 is quashed and set aside.
- iii) The said complaint case is restored to the file of the learned trial Court for disposal, according to law.
- iv) Record and Proceedings be sent back to the learned trial Court forthwith.
- v) The appeal is accordingly disposed off.

(A.M.BADAR J.)