

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

CRIMINAL APPLICATION NO.123 OF 2018

Umashankar R. Gupta	...Applicant
V/s.	
The State of Maharashtra & Anr.	...Respondents

Mr. Rajendra Sorankar for the Applicant.

Mrs. P.P. Shinde, APP for Respondent State.

Ms. Heena Suvarnakar i/b.K.S. Patil for Respondent No.2.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 06th SEPTEMBER 2018

P.C.:

1. The said application is taken out for quashing and setting aside the impugned order dated 05.12.2014 passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, which reads thus:-

The complainant is absent since long. Case is old. No progress is made in the matter. It appears that complainant is not interested in prosecuting the matter.

Hence this complaint is dismissed for want of prosecution. Accused is acquitted. His bail bond stands cancelled. Proceeding is closed.

2. The learned counsel for the applicant would submit that

perusal of the record and proceedings which he had produced at Exh.E to the petition would reveal that the learned Magistrate has committed an error in passing the impugned order on 15.12.2014 by making an observation that the complainant is absent since long and no progress is made in the matter and arrived at a conclusion that the complainant is not interested in prosecuting the matter. He would also specifically submit that there is complete non-application of mind on behalf of the learned Magistrate, who has failed to look into the Roznama of the proceeding and would make an observation that "Accused is acquitted. His bail bond stands cancelled".

3. With the assistance of the learned counsel for the applicant, I have perused the ordersheet, which is produced at Exh.E. It appears that the C.C.No.4301092/SS/2013 began its proceeding on 04.05.2013. It further records that on 04.05.2013 the learned Magistrate is in meeting and therefore, Board is discharged. On 29.06.2013 it makes a note that the complainant was present with Advocate Exh.P-3. "Verification Statement recorded. Perused document. Heard advocate. Process issued against the accused. Summons returnable on 03.10.2013". Later on, when the matter was listed on 03.10.2013, the learned Magistrate was on leave and there is a stamp endorsement to that effect that the case is adjourned and the next date is 14.02.2014. Ordersheet reveals that

on the next three dates both the parties were absent. Resultantly on 05.02.2014 the impugned order was passed.

4. The learned counsel for the applicant makes a categorical statement that though the process was issued by an order dated 29.06.2013, no process fees was paid and therefore, there is no question of the learned Magistrate observing that the bail bond stands cancelled while acquitting the accused.

5. On hearing the learned counsel for the parties and on perusal of the proceedings before the Court, it is apparent that the applicant, who is complainant before the Court remained present on 29.06.2013 when the process was issued. However, on three subsequent dates he was not present and considering his continuous absence, the learned Magistrate has passed the impugned order, thereby dismissing the complaint for want of prosecution.

6. There is some justification given in the application for the absence of the complainant on the three consecutive dates. I have perused the said application and it appears that the medical reason stated justifying the absence on the respective three dates. This justification is not disputed by the learned counsel for the respondent.

7. In the interest of justice and in order to grant an opportunity to the complainant to proceed with the matter, the impugned order

is quashed and set aside. The matter would stand restored subject to payment of cost of Rs.20,000/- to be deposited in the Police Welfare Fund Account No. 914010029005759, IFSC Code UTIB0000060 and on producing the receipt of the said amount within a period of two weeks from today. It is only on production of the Receipt of deposit, the impugned order passed on 05.12.2004 would be set aside. On such a receipt being produced in the Court of Metropolitan Magistrate after two weeks the learned Magistrate would restore the proceedings and proceed with the same in accordance with law.

8. It is also made clear that the learned Magistrate would be very careful in passing the order and it would do so upon perusal of the Roznama of earlier dates, so that the glaring mistakes are avoided in future.

9. Application is allowed in the aforesaid terms.

(SMT.BHARATI H. DANGRE, J.)