

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION [ALP] NO.213 OF 2018
WITH
CRIMINAL APPEAL NO.1054 OF 2018**

Ambaji Ganu Gurav

Rahul Apartment, “B” Wing,

3rd Floor, Room No.11,

Baburao Pakhekar Marg,

Dadar, Mumbai – 400 028.

... **Applicant/Appellant**

V/s.

1. Sachin Chandrakant Narkar

Residing at Room No.107, 3rd Floor,

Ramji Sojpal Building, Gokhale Road

North, Portugues Church, Dadar,

Mumbai 400 028.

2. The State of Maharashtra

... **Respondents**

Mr.Yashpal MaheshchandraThakur for the applicant.

Mr.Rohan R. Sonawane for respondent no.1.

Mr.P.H. Gaikwad Patil, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 21st AUGUST 2018.

ORAL JUDGMENT :

1. Heard the learned Advocate appearing for the applicant/original complainant as well as the learned Advocate appearing for respondent no.1/original accused. I have also heard the learned Additional Public Prosecutor for the State.

2. Leave as prayed is granted.

3. Admit.

4. Heard forthwith finally.

5. A complaint alleged offences under Sections 323, 337, 341, 352, 504 & 506 of the Indian Penal Code came to be lodged by applicant Ambaji Gurav against respondent no.1 Sachin Chandrakant Narkar. The learned Trial Court recorded verification statement of the applicant / original complainant. Similar statement of one eye witness named Mithun Kambli also came to be recorded thereafter. After hearing learned Advocate appearing for the complainant, the learned Trial Court was pleased to issue process for offences punishable under Sections 323, 504 and 506 of the Indian Penal

Code against respondent no.1. Then plea came to be recorded on 6th January, 2015. When the complaint was posted for recording evidence of the applicant herein, he had chosen to remain absent on three consecutive date which resulted in moving an application under Section 256 of the Criminal Procedure Code by the respondent no.1/accused. Ultimately, that application was allowed by the impugned order dated 29th December 2015 and the complaint came to be dismissed for want of prosecution.

6. Though the learned Advocate appearing for respondent no.1 / accused Sachin Narkar vehemently opposed the claim for remand of matter, I am inclined to quash and set aside the impugned order and to remand matter to the learned Trial Court for decision on merit. Primary function of the Court is to adjudicate the dispute on its own merit rather adhering to the technicalities of law. Perusal of roznama shows that the applicant/original complainant was diligent in prosecuting his cause. Reasons stated for non appearance when the complaint was posted for recording of evidence is communication gap between the applicant and his advocate. Interest of the other accused can be taken care of by imposing some costs and restoring

the complaint as it is seen that there are eye witness to the incident in question. Hence the order;

:: ORDER ::

- (i) The appeal is allowed.
- (ii) The impugned order dated 29th December, 2015 passed by the learned Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Mumbai in C.C. No.2450/SS/2013 is quashed and set aside. The complaint is restored to the file of the learned Trial Court for deciding the same according to law. However, the applicant to pay costs of Rs.5000/- to respondent no.1 within a period of four weeks from today.
- (iii) The parties are directed to appear before the learned Trial Court on 28th September, 2018.
- (iv) The applicant/original complainant to produce receipt of payment of costs before the learned Trial Court.

Vina
Arvind
Khadpe

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Vina Arvind
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(A.M.BADAR J.)