

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.557 OF 2013

Shri. Manjeet Amriksingh Sodhi
Aged 54 years, Occ.Service,
Resident of flat No.4, Ground Floor,
Nilkanth Sadan, 6th Peru Baug,
Off Aaray Road, Goregaon (E),
Mumbai – 400 063.

...Applicant

Vs.

1. Mrs. Shakuntala Hareshwar Purav,
Resident of Flat No.10, 2nd Floor,
Nilkanth Sadan, 6th Peru Baug,
Off Aaray Road, Goregaon (E),
Mumbai – 400 063.

2. Mr. Sharad Hareshwar Purav,
Resident of Flat No.2, Ground Floor,
Nilkanth Sadan, 6th Peru Baug,
Off Aaray Road, Goregaon (E),
Mumbai – 400 063.

3. The State of Maharashtra

...Respondents

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Mrs. Vrishali Raje, Advocate for the Applicant.

Mr. Deepak Y. Chitnis i/b. M/s. Deepak Chitnis – Chiparikar & Co.
for respondent No.2.

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 5th OCTOBER 2018.

ORAL JUDGMENT :

1. Heard.
2. Leave, as prayed, is granted.
3. Admit.
4. Heard finally considering the short controversy involved in the matter.
5. By this appeal, the appellant/original complainant is challenging the Order dated 7th February 2012 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai, thereby dismissing the Criminal Case bearing No.892/SS/2002 instituted by the appellant against the respondent Nos.1 and 2 for the offence punishable under Section 500 of the Indian Penal Code for want of prosecution.
6. Brief facts leading to the institution of the present appeal are thus:-

Appellant/original complainant Manjit son of Amriksingh Sodhi was the defendant in RAE Suit No.64/171 of 2002 instituted by Landlady Shakuntala for claiming recovery of possession of tenanted premises. In the plaint of that suit, name of father of the

appellant/original complainant is stated as Hanuman instead of Amriksingh. The said fact is stated to have been confirmed by the respondent No.2/accused in his cross examination. This, according to the appellant/original complainant, amounts to the offence punishable under Section 500 of the Indian Penal Code. Accordingly, he instituted a complaint case on 11th September 2002, which came to be registered as Criminal Case No.892/SS/2002. The same was pending on the file of the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai.

7. After pendency of the subject criminal case for about 10 years, on 13th September 2011 the learned Metropolitan Magistrate by recording absence of the complainant ('appellant' hereinafter) imposed cost of Rs.500/- for granting exemption to the complainant. On that day, it was directed that the cost shall be paid by 7th February 2012 and the complaint was adjourned to 7th February 2012. On 7th February 2012 also the appellant/complainant was absent. It is seen that though his learned Advocate was present, no adjournment application or exemption application was moved and as such the learned

Metropolitan Magistrate passed detailed order on the complaint Exh.1 by recording the fact that the complainant is conspicuous by his absence in past. Therefore, resorting to the provisions of Section 256 of the Code of Criminal Procedure, the complaint came to be dismissed. This order is impugned in the instant appeal.

8. Heard the learned counsel appearing for the appellant/original complainant. By relying on the judgment in the matter between *Associated Cement Co.Ltd. V/s. Keshvanand*¹, the learned Counsel argued that it is the duty of the Court to ascertain whether presence of the complainant is essential for the progress of the case and if the situation does not justify presence of the complainant, on that day the Court should adjourn the criminal case to another date instead of dismissing the complaint and acquitting the accused. The learned Counsel argued that the appellant is ready to pay cost even now and the learned trial Court ought not to have dismissed the complaint in the wake of the fact that it was not posted for recording evidence. The appellant who happens to be the original complainant was attending the case

¹ AIR 1998 SC 596

regularly.

9. As against this, the learned Counsel for the respondent/accused argued that in such a situation the matter can be ended by accepting apology of the surviving accused. He further argued that the appellant/original complainant was not interested in prosecuting the complaint, and therefore, the same was rightly dismissed by resorting to the provisions of Section 256 of the Code of Criminal Procedure.

10. I have considered the submissions so advanced and also perused the entire record made available. The complaint case for the alleged offence punishable under Section 500 of the Indian Penal Code was instituted way back on 11th September 2002 by the appellant/original complainant. After recording of plea of the appellant/original complainant, process was issued and then the complaint proceeded further. As such, it cannot be said that the said complaint was not even ripe for recording evidence after a lapse of 10 years. The complaint was, in fact, fixed for recording of evidence way back in the year 2006 itself. Perusal of the order-sheet shows that on several occasions, the appellant/original

complainant was absent and on many occasions, exemption applications were moved for condoning his absence and ultimately cost of Rs.500/- was imposed for granting exemption to him. The cost was payable by the next date i.e. by 7th February 2012. On that day, neither the cost was deposited, nor the complainant appeared before the learned trial Court for adducing evidence. Even application for adjournment or for exemption of the complainant was not filed by the learned Advocate representing the appellant/original complainant before the learned trial Court. In such situation, the complaint came to be dismissed by the learned trial Court and the accused were acquitted.

11. At the same time, it needs to mention here that primary function of the Court is to adjudicate the disputes on their own merits. Negligence in prosecuting the complaint shown by the appellant/complainant can be taken care of by imposing appropriate costs on the appellant for getting the complaint restored. This course of action would not prejudice to any party. Interest of the respondent/accused can be taken care of by adopting this mode. Therefore, the order:

- : ORDER : -

- i) The appeal is allowed.
- ii) The impugned Order dated 7th February 2012 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai, below Exh.1 in Criminal Case No.892/SS/2002 between the parties is quashed and set aside and the said complaint case is restored to the file of the learned Metropolitan Magistrate subject to payment of costs quantified at Rs.30,000/- payable by the appellant/original complainant to the respondent/original accused No.2 Sharad Purav within a period of one month from today.
- iii) The complaint be restored to the file only if the costs of Rs.30,000/- is paid within the prescribed time and the receipt thereof is placed on the record of the Registry of this Court by the appellant/original complainant.
- iv) The appeal is disposed off.

(A.M.BADAR J.)