

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL APPLICATION NO. 118 OF 2017
WITH
CRIMINAL APPLICATION NO. 119 OF 2017

Kalpesh Mahendra Patel

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

Mr. Sanjay Bhatia for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent No.1 -State.

CORAM : SMT. BHARATI DANGRE, J.

DATE : 25th SEPTEMBER, 2019.

P. C. :

1. In the backdrop of consistent absence of the accused and his counsel, on 17.04.2016 the Complainant was constrained to move an application seeking issuance of proclamation under Section 82 (1) (2) (i) (a) (b) (c) (ii) of the Code of Criminal Procedure so as to compel his presence on the next date of hearing. On such an application being made, the proclamation came to be issued. The parties are at loggerhead on the issue as to on the earlier dates, the accused remained present or he was only represented through his counsel.
2. I do not wish to enter into said controversy since the Roznama

speaks for itself. Suffice it to state that being aggrieved by the order of proclamation, the Applicant approached this Court on 07.02.2017 and ad-interim relief in terms of prayer clause (c) came to be granted. Since then the Applicant is enjoying the said relief and the Complainant is not able to take the matter further, though in the year 2016 itself it was fixed for cross-examination.

3. In the peculiar circumstances of the case, the learned Counsel for the Applicant undertakes before the Court that the Applicant would remain present before the concerned Court on the next date of hearing which is scheduled on 03.10.2019. Learned Counsel for the Complainant is keen and insistent that on the said date the Applicant himself should remain present. The said request deserves to be acceded to since the Roznama clearly points out that the accused did not remain present.

On the earlier dates on remaining present on 03.10.2019, the Applicant is at liberty to move an appropriate application before the concerned Court and seek an exemption from appearance, which may be granted by the concerned Court. The said undertaking by the Applicant should be abided by and it is made clear that in the absence of the compliance of the said undertaking, the trial Court would be at

liberty to take appropriate steps, including a serious step of issuing Proclamation or any other step in accordance with the Code of Criminal Procedure.

4. In view of the aforesaid observations, the proclamation dated 18.04.2016 deserves to be quashed and set aside and is accordingly quashed and set aside.

5. Both the Criminal Applications stand disposed of.

[SMT. BHARATI DANGRE, J.]