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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.219 OF 2018**

Rajendra Pannalal Dagade Applicant.

V/s

Chintamani Plastic Industries & Anr. Respondents.

Mr. Amol D. Wagh for the Applicant.
Mr. A.A. Palkar, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 21, 2019

P.C.:-

- 1] This is an application for grant of leave to appeal.
- 2] Complaint preferred by the Applicant/Complainant came to be dismissed for want of prosecution vide order dated 8/2/2016 passed below Exhibit-1 in complaint case. As a consequence of the aforesaid order, Respondent/Accused stood acquitted.
- 3] The learned Counsel appearing on behalf of the Applicant would invite attention of this Court to the fact that Counsel for Applicant/Complainant Shri Hiralal Gandhi was not keeping good

health. According to him, the said cause has prompted the learned Counsel for the Applicant/Complainant before the Trial Court to remain absent. He would urge that absence of the Advocate for the Complainant is out of bonafide reasons and that being so, the order of dismissal of the complaint needs to be set aside with an order of remand. He would also invite attention of this court to the stage at which complaint came to be dismissed.

4] With the assistance of the learned Counsel for the Applicant, I have perused the entire proceedings produced on record. Applicant/Complainant was subjected to cross-examination and since Accused and his Lawyer were absent, cross-examination was concluded on 15/2/2010. The complaint was initiated in 2008 and after recording verification, process came to be issued on 4/2/2009.

5] The medical certificate speaks of ailment of Counsel Mr. Hiralal Gandhi. However, the said ailment is of 27/12/2014, whereas the complaint was dismissed on 8/2/2016. There is no material to infer that even on the date of dismissal of the complaint, lawyer was ailing. Apart from above, complainant himself also remained absent. No case

for indulgence is made out. As such, leave stands refused.

6] However, this will not preclude the Applicant/Complainant from initiating civil proceedings for recovery.

(NITIN W. SAMBRE, J.)