

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 1 OF 2021 IN
CRIMINAL APPEAL NO..... OF 2021

1. Damodar s/o Narayan Murkute,
aged about 59 years, Occ. Business.
2. Sau. Vaishali w/o Damodar Murkute,
aged about 55 years, Occ. Housewife.
3. Rakesh s/o Damodar Murkute,
aged about 33 years, Occ. Business.

All are R/o Central Railway Colony,
Besa Road, Omkar Nagar, Nagpur.

...APPLICANTS/APPELLANTS

Versus

1. Sau. Varsha Subhash Bhandarkar,
aged about 50 years, Occ. Service as Teacher.
2. Subhash Pandurang Bhandarkar,
aged about 55 years, Occ. Service as Teacher.

Both are R/o Tadala Road, Mul,
Tah. Mul, District Chandrapur.

3. State of Maharashtra,
through P.S.O. Mul, District Chandrapur.

...RESPONDENTS.

Shri S.T. Harkare, Advocate for the applicants/appellants.
Shri M.J. Khan, A.P.P. for respondent No.3.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JANUARY 12, 2021.

ORAL JUDGMENT :

Heard.

2. None for respondent Nos.1 and 2, though served.

3. This appeal is directed against the order dated 05/07/2018 passed by the JMFC, Mul, District Chandrapur in S.C.C. No. 71/2015, whereby the complaint dated 26/03/2015 filed by the applicants - original complainants, came to be dismissed for want of prosecution, which was filed for taking cognizance against the respondents - accused for the offence punishable under Sections 294 and 506 read with Section 34 of the Indian Penal Code.

4. The matter was kept for verification. As the complainants were absent, a report under Section 202 of the Code of Criminal Procedure was called on 17/08/2015. The said report was received on 24/09/2015. The complaint came to be dismissed for want of prosecution by way of the impugned order.

5. Perusal of Roznama of the proceedings, with the assistance of learned counsel for the applicants, shows that for most of the dates, the complainants were present. It is not the case that the complainants and their counsel were absent throughout. Roznama does appear about the number of chances given to the complainants, however, at the same time, Roznama does not reflect the lackadaisical attitude of the complainants and their counsel. After giving last chance, when the junior counsel appeared on behalf of the counsel for the complainants, on the basis of memo of appearance, the impugned order came to be passed.

6. In the opinion of this Court, the case does not appear to be of complete case of non-prosecution. On the contrary, Roznama reflects that for most of the dates, the complainants were present.

7. As the complainants are prosecuting this matter since 2015, in the opinion of this Court, one opportunity needs to be given to show their bonafide in prosecuting the matter.

8. Hence, the Criminal Appeal is allowed. The order dated 05/07/2018 passed by the JMFC, Mul, District Chandrapur in S.C.C. No. 71/2015 is quashed and set aside. S.C.C. No. 71/2015 is restored to the file. The parties to appear before the JMFC, Mul, District Chandrapur on 18/02/2021.

JUDGE

Sumit