

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

923 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.4 OF 2021

SAU. PRABHALI SHRIKANT MUGALE
VERSUS
DINKAR NAMDEV MUGALE AND OTHERS

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Mr. Amol S. Sawant, Advocate for Appellant.

Mr. Amit A. Tandulkar, h/f Mr. Gajanan G. Kadam, Advocate for Respondent Nos.1, 2 and 4.

Mr. Santosh N. Patne, Advocate for Respondent Nos.3 and 5.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 23rd August, 2022.

PER COURT:

. The applicant/original complainant is seeking leave to file appeal by taking aid of Section 378(4) of the Code of Criminal Procedure.

2 Heard Mr. Amol Sawant, learned counsel for the applicant, Mr. Amit Tandulkar, holding for Mr. Gajanan G. Kadam, learned counsel for respondent Nos.1, 2 and 4, so also Mr. Santosh Patne, learned counsel for respondent Nos.3 and 5.

3 The learned counsel for the applicant invited my attention to the impugned order (page No.28). He submitted that no sufficient

opportunity was given to the applicant to prosecute her private complaint. The adjournment application filed by the applicant came to be turned down without any sufficient ground. He submitted that the impugned order has caused injustice to the applicant/complainant. He, therefore, urged to quash the same and allow the applicant to prosecute the case.

4 Mr. Amit Tandulkar, holding for Mr. Gajanan G. Kadam, learned counsel for respondent Nos.1, 2 and 4, so also Mr. Santosh Patne, learned counsel for respondent Nos.3 and 5 supported the impugned order dated 4th January, 2020.

5 Having regard to the submissions of the learned counsel for both the sides, I have studied the impugned order passed by the learned Judicial Magistrate First Class, (Court No.1) Chalisgaon, below Exhibit-1 in R.C.C. No.41 of 2018.

6 On going through the impugned order, it is evident that the present applicant/complainant continuously remained absent when the matter was fixed for recording evidence before charge. It is evident that on 20th July, 2019, the case was fixed for evidence before charge when adjournment was sought on behalf of the applicant. That application came to be turned down and the complaint was fixed for

dismissal order. Even on that day, the applicant moved another application for adjournment, which was obviously rejected by the learned Magistrate. The learned Magistrate has observed the conduct of the applicant/complainant. It is observed by the learned Magistrate that the applicant/complainant was continuously remained absent and failed to tender her evidence before framing the charge. It is not the case that sufficient opportunities were not extended to the applicant/complainant to prosecute her case. There is no error on the part of the learned Magistrate in dismissing the complaint when the complainant has failed to produce her evidence and not shown any interest in prosecuting the case. No case is made out to interfere with the impugned order.

7 The application for leave to file appeal is hereby rejected.

[SHRIKANT D. KULKARNI, J.]

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