

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL WRIT PETITION NO.474 OF 2017

BHIMA S/O. RAMA PURI

VERSUS

SHANTILAL HARIBHAU GAIKWAD AND OTHERS

...

Advocate for Petitioner : Mr. S.P. Salgar, Adv. for Niteen V. Gaware

APP for Respondents: Mr. S.R. Yadav Lonikar.

Adv. For respondent Nos. 1 to 3 : Mr. Ketan D. Pote h/f. A.G. Ambetkar.

CORAM : A.S. GADKARI, J.

DATE : 21ST JANUARY, 2022.

P. C. :-

1] Petitioner/original complainant has impugned Judgment and Order dated 16.11.2015 passed in Criminal Revision No. 82 of 2010 by the learned Additional Sessions Judge, dismissing the said revision and confirming the Order dated 1.1.2010 passed by learned Judicial Magistrate (First Class) Pathardi in Misc Application No. 404 Of 2007, dismissing the complaint of the petitioner for non prosecution.

2] Heard Mr. Salgar, learned Advocate for the petitioner, Mr. Pote, learned Advocate for respondent and learned APP for State. Perused record annexed to the petition.

3] Record reveals that, the petitioner had filed Misc. Application No. 404 of 2007 on 4.12.2007 against respondent Nos. 1 to 3 as contemplated under Section 156(3) of Cr.P.C. for lodgment of crime

under Sections 420, 408 r/w. 34 of IPC. After recording verification of the petitioner, the learned Magistrate directed concerned police station to submit its report as contemplated under Section 202 of Cr.PC.. The P.S.O. attached to Pathardi Police Station accordingly submitted its report (Exh. 8) on 21.7.2018 before the trial court. The trial Court, thereafter posted said complaint for arguments of petitioner on various occasions i.e. 12.6.2009, 8.9.2009, 11.11.2009, 1.12.2009 and lastly on 1.1.2010.

Record clearly indicates that on all the said dates, neither the petitioner nor his advocate remained present to advance arguments before the trial Court. The trial Court therefore was pleased to dismiss the said complaint for want of prosecution by its order dated 1.1.2010 as contemplated under section 256 of Cr.PC. As a consequence thereof, respondent Nos. 1 to 3 stood discharged/acquitted from the said case.

4] Petitioner thereafter filed Revision Application before the learned District Judge 4 and Additional Sessions Judge, Ahmednagar. The revisional Court by its impugned Judgment and Order dated 16.11.2015 has turned down the same, by upholding the order of trial court.

5] The dates of non appearance of the petitioner before the trial court as mentioned in para No.3 above are admitted facts on record. It is thus clear that, the petitioner was not diligent enough in appearing before the trial Court despite several opportunities were granted to him. As noted earlier, it is apparent from record that, the petitioner for more than 5 consecutive dates did not appear before the trial Court. The trial Court by showing leniency and giving latitude to the petitioner, kept on adjourning the matter. However lastly on 1.1.2010 the trial Court was left with no other alternative than to dismiss the complaint.

6] Perusal of record indicates that, even otherwise the present

complaint is more than 14 years old. As at the initial stage of hearing itself the petitioner was not interested, it will now be inappropriate to again arraign respondent Nos. 1 to 3 as accused by restoring the said complaint to file.

7] There is concurrent finding recorded by both the Courts below. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to

the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

8] After perusing entire record, this court is of the considered view that, both the courts below have not committed any error while passing the impugned Orders, either in law or on facts.

9] Petition is accordingly dismissed.

[A.S. GADKARI]
JUDGE.

grt/-