

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4164 OF 2019

Deepak Mohalal Gohil

Petitioner

versus

The State of Maharashtra and another

Respondents

Mr.Ashok Kumar Dubey i/by SAVJ Law Solutions, Advocate for petitioner.

Mr.Laxman Kanal i/by Laxman Kanal & Associates, Advocate for respondent no.2.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd September 2022

PC :

1. The petitioner is the original complainant. The complaint was filed before the Court learned Metropolitan Magistrate, 60th Court, Kurla, Mumbai which was numbered as 31/SW/2017 for the offences under Sections 420, 406, 441, 506(ii) and 120B of Indian Penal Code. The complaint was filed on 1st April 2017.

2. Learned Magistrate vide order dated 14th November 2018 dismissed the complaint for none prosecution While passing said order it was observed that complainant is not serious about his matter. Liberty was given to him but he did not remain present and did not take steps to proceed with the complaint. Thus it is apparent that complainant is not willing to proceed with the matter and the complaint was disposed off for want of prosecution.

3. The aforesaid order was challenged before this Court by

preferring present petition on 16th August 2019. The petition was dismissed for want of prosecution and restored subsequently.

4. Learned advocate for petitioner submitted that complaint was dismissed before taking cognizance. Even verification of complainant was not recorded. On account of communication gap, the complainant did not remain present before the Trial Court, which has resulted in dismissal of complaint for non prosecution. In the interest of justice the complaint may be restored. The petitioner has also filed affidavit giving explanation for absence before court.

5. Learned advocate for respondents submits that sufficient opportunity was given to the complainant by Trial Court. He remained absent before Court. The conduct indicate that he was not serious about his matter and the Court was constrained to dismiss the complaint for want of prosecution. The complaint was filed in 2017 and it was dismissed on 14th November 2018. After a gap of about nine months the petitioner has filed this petition which is pending since 2017. Hence considering the factual aspects, the complaint may not be restored.

6. Perused documents on record. The order passed by learned Magistrate does indicate that complainant did not remain present before Court and did not take steps to conduct the proceedings. The complaint has been dismissed for want of prosecution. After having considered the submissions of learned advocate for petitioner, the affidavit filed by him and also considering the submissions of learned advocate for respondents, I am of the opinion that opportunity should be given to the complainant-petitioner to proceed with his

complaint and in the interest of justice the order dismissing the complainant is required to be set aside.

ORDER

- (i) Criminal Writ Petition No.4164 of 2019 is allowed and disposed off;
- (ii) Impugned order dated 14th November 2018 passed by Metropolitan Magistrate, 60th Court, Kurla, Mumbai, below Exhibit-1 in C.C.No.31/SW/2017 is quashed and set aside;
- (iii) The Complaint No.31/SW/2017 is restored to file;
- (iv) Learned Magistrate shall proceed with complainant in accordance with law;
- (v) The complainant shall appear before learned Magistrate on 17th October 2022.

(PRAKASH D. NAIK, J.)

MST