

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1512 OF 2023

**SANTOSHKUMAR GHISULAL JAJU
VERSUS
BALASAHEB RAMA HINGE**

Mr. Ruchir S. Wani, Advocate for the applicant

CORAM : R. M. JOSHI, J.

DATE : 5th SEPTEMBER, 2023

P.C. :-

1. This application takes exception to the order dated 9th February, 2023 passed by the learned Jt. JMFC, Shevgaon, District Ahmednagar in S.C.C. No. 210/2019 whereby the complaint was dismissed for want of prosecution under Section 256 of Cr.P.C.

2. Learned counsel for the applicant submits that the Magistrate ought not to have dismissed the complaint under the provisions Section 256 of Cr.P.C. for the purpose of dismissal of the complaint as the said provision can be invoked only after the summons is issued on the complaint. According to him in the instant case no summons was issued to the accused for want of recording of verification. To support his contention he placed reliance on the judgment of this Court in case of ***Umedmal bhikulal Vs. Saibaba Trading Company and Anr., 2016(9) LJSOFT 75***. Apart from this submission it is argued that for

the reason that he could not establish communication with his Advocate, complaint could not be prosecuted and which has resulted into passing of impugned order.

3. From the impugned order it is clear that the complaint was filed on 24th May, 2019 however, no steps were taken for prosecution thereof till 9th February, 2023. Record further indicates that orders were passed giving opportunity to the complainant/applicant herein to take appropriate steps which he did not take. In such circumstances though the order impugned appears correct but when complainant/applicant herein has come out with specific case showing cause which prohibited him from appearing before the Court, the same could not have been ignored by learned Trial Court.

4. Respondent is duly served but his absent and this fact indicates that he has no inclination to oppose present application. In such circumstances, only with a view to give one opportunity to the complainant to pursue the complaint before the Trial Court, the order impugned deserves to be set aside. Complainant is directed to deposit an amount of Rs.2,000/- (Rupees Two Thousand only) by way of cost with Legal Services Authority, Sub Committee, Aurangabad within one week from today.

5. In view of the above, the application is allowed. The impugned order is set aside. Complainant is directed to appear before the Magistrate on 11th September, 2023. The Magistrate to record verification of the complainant on that day and to pass further order in accordance with law.

(R. M. JOSHI, J.)

ssp