

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.16 OF 2015**

Shabu Bhimappa Dudhale
Age 56 years, Occupation-Business
R/o 2114, "E" Ward, Kawala Naka
Kolhapur ...Appellant

vs.

1. Vinayak Appasaheb Padavle
Age 36 years, Occupation-Business
R/o 823, "E" Ward, Line Bazar,
Kolhapur ...
2. State of Maharashtra ...Respondents

Mr. Anand S. Patil for the Appellant.
Mr. S. R. Agarkar APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 18TH JULY 2023

JUDGMENT :

1. Heard learned Advocate for the Appellant-complainant. No one is present on behalf of the Respondent-accused. Issue involved in this Appeal is as under :

"Whether power under Section 256 of the Code of Criminal Procedure can be exercised at post evidence stage when accused remained absent ?"

2. The appeal was already admitted on 5th December 2014. The action under Section 390 of the Code of Criminal Procedure was also initiated. The Farad Sheet dated 6th June 2023, mentions that Respondent No.1-accused has furnished surety of Rs.10,000/- on 30th June 2015. However, no one has appeared in this Appeal. It is travesty of justice, that appeal involving trifle issue remained pending for eight years. Reasons may be different.

3. Perused the impugned order dated 26th December 2012, passed by 15th Judicial Magistrate, First Class, Kolhapur in Summary Criminal Case No.4161 of 2006. The accused was acquitted for the offence punishable under Section 138 of the N.I. Act by taking recourse to Section 256 of the Code of Criminal Procedure. When this order came to be passed, the matter was fixed for recording statement of the accused under Section 313 of the Code of Criminal Procedure.

4. The complaint was filed in the year 2006 bearing SCC No.4161/06. Roznama indicates accused was in the habit of avoiding process of this Court. The following are the important dates :-

January 2007	Process was issued.
17/08/2010	Nonailable warrant issued as accused remained absent.
23/03/2001	Accused produced in execution of Nonailable warrant
	Application for bail
	Plea recorded
24/03/2011	Accused released on bail.
30/03/2011	Evidence of complainant.
7/04/2011	No cross order.
	Close pursis. Adjourned for statement under Section 313 of the Code.
14/07/2011	Nonailable warrant issued
1/02/2012	Cash surety forfeited
	Issued nonailable warrant.
30/10/2012	Nonailable warrant issued through Superintendent of Police
26/12/2012	Complaint dismissed for want of taking steps.

5. So from events what transpires is as follows :-

(a) The complaint is pending since 2006.

- (b) Accused has no respect for law.
- (c) He has not responded to Court summons earlier to plea and thereafter also.
- (d) Trial Court was required to issue non bailable warrant on various occasions.
- (e) Prior to recording of plea, non bailable warrant was served and Respondent-accused was released on cash bail.
- (f) Non bailable warrant could not be served even through Superintendent of Police.

6. On this background, the Court of Judicial Magistrate, First Class, 15th Court, Kolhapur passed an order dated 26/12/2012 thereby acquitting the Respondent-accused by taking recourse to the provisions of Section 256 of the Code of Criminal Procedure. The learned Magistrate noted following facts in the order :-

- (a) The complainant was absent persistently on 15/06/2012, 4/08/2012, 25/09/2012 and on 30/10/2012 (para 2).
- (b) Report of Superintendent of Police indicates that accused was outside his house (para 3).
- (c) Complainant has not taken steps under Section 82, 83 of the

Code of Criminal Procedure (para 4).

7. Now the question is whether it was appropriate for the learned Magistrate to take recourse to the provisions of Section 256 of the Code of Criminal Procedure. If we read those provisions, we may find the following ingredients :-

- (a) Case is fixed for hearing.
- (b) Complainant is absent.
- (c) His presence is required.
- (d) Court does not feel it necessary to adjourn the matter.

Then only complaint can be dismissed.

8. The Hon'ble Supreme Court in case of *Associated Cement Co. Ltd. Vs. Keshvanand*¹, has dealt with this issue. The purpose is to check the dilatory tactics of the complainant, principle of speedy trial is recognised.

9. However, if the entire facts and circumstances of the case are considered, there is reason to believe that the learned Magistrate has hastily passed that order. It is a matter of record that accused has no respect to the law. And on every occasion, the complainant was

¹ (1998) 1 SCC 687

required to take steps. Execution of non bailable warrant is not an easy formality. At the same time, it is also true that unchallenged evidence could not have been used by the trial Court unless it was put to the accused under Section 313 of the Code of Criminal Procedure. At the same time, trial Court ought to have given weightage to the fact that patience of complainant was tested every time. If it is so, the trial Court waited and could have given direction to the complainant to take steps.

10. The judgment of acquittal need not be interfered rightly. But the power under Section 256 of the Code should not be exercised only for the purpose of disposing of the cases. Trial Court has not considered the efforts taken by the complainant every time to secure presence of the complainant. The order deserves to be set aside. Certain directions for speedy disposal are required as the complaint is pending since 2006. Hence, I proceed to pass the following order :-

ORDER

- (a) The Appeal is allowed.
- (b) The order passed by the Court of 15th Judicial Magistrate, First Class, Kolhapur dated 26th December 2012, is set aside.

The complaint is restored to file.

- (c) The complainant is directed to appear before the 15th Judicial Magistrate, First Class, Kolhapur on 28th July 2023, at 11 am and is directed to take necessary steps.
- (d) Once the Respondent appears, the trial Court is directed to keep the matter on day-to-day basis.

[S. M. MODAK, J.]