

SATISH
RAMCHANDRA
SANGAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 277 OF 2016

Shakil Ahmed Shaikh

... Applicant

Versus

The State of Maharashtra and Anr.

... Respondents

Mr.Aniket Vagal a/w Mr.Kunal Pednekar and Mr.Divesh Mehani, Advocate
for Applicant.

Mr.N.B.Patil – APP for the Respondent No.1 – State.

None for the Respondent No.2.

CORAM : S. M. MODAK, J.

DATED : 25th JANUARY, 2023

P. C. :-

1. Heard learned Advocate Shri.Vagal for the Applicant–Complainant. He has filed a private complaint before the Court of Metropolitan Magistrate, 52nd Court, Kurla bearing C.C.No.1100016/SW/2014 against the Respondent-Accused. It is for the commission of the offence under Sections 323, 406, 420, 504 and 506(II) of the Indian Penal Code, 1860 (45 of 1860). The Court has also issued a process. Copy of summons is on Page No.50. The case is fixed for appearance of the Respondent-Accused.

2. The Complainant claims that he has served and also served privately and necessary documents are on Page Nos.31 and 32. The Respondent-Accused has not appeared. Unfortunately, the Appellant was arrested on 15th February, 2016 in C.R.No. 55 of 2016 (Chunabhatti Police Station) and he was released on 27th May, 2016. Copy of relevant roznama is on Page No.14. The matter was adjourned from 29th October,

2015 to 31st December, 2015, then 25th February, 2016 to 28th April, 2016 and ultimately, it was adjourned to 16th June, 2016. A copy of dismissal order is on Page No.15. Copy of bail order in C.R.No. 55 of 2016 and 327 of 2015 is annexed. The bail order is of dated 26th May, 2016 (Page No.55).

3. So, for some of the dates before the learned Magistrate, the Complainant has got satisfactory explanation to offer for his absence. Unfortunately, his Advocate was also absent. Learned Advocate relied upon a judgment in case of *Priyadarshini Cements Limited and etc., V/s. State of A.P and another [2002 CRI.L.J. 4465]* as well as in case of the *Associated Cement Co. Ltd. V/s. Keshvanand [Supreme Court of India : 16th December, 1997]*. The case was fixed for appearance of the Accused. So, I find good reason to grant Special Leave to prefer an Appeal and it is granted.

4. As directed on 23rd January, 2023, the Respondent Yakoob Belim is duly served. Copy of relevant documents is taken on record and marked as Annexure-X. It is supported by affidavit. In spite of that, he has not appeared before this Court. Hence, matter is heard. It was also made clear that an endeavour will be made to dispose of the Appeal finally. In view of that, Appeal is also heard finally.

5. For the reasons mentioned earlier, the order cannot be sustained and it needs to be set aside. The Appellant needs to be given an opportunity to prosecute his complaint before the learned Magistrate. In view of that, following order is passed :-

ORDER

- (i) The Appeal is allowed.
- (ii) The order dated 16th June, 2016 passed by the

Metropolitan Magistrate, 52nd Court, Kurla in case No.1100016/ SW/2014 is set aside.

- (iii) Complaint be restored back.
- (iv) The Appellant is directed to appear before the Court on 6th February, 2023.
- (v) The Appellant is directed to take steps for securing presence of Respondent-Accused.
- (vi) It is made clear that the matter is old and hence, priority be given to that matter.
- (vii) Even the learned Magistrate is entitled to regulate the conduct of the Complainant in case if he delays the matter by passing appropriate orders including imposing exemplary cost.

(S. M. MODAK, J.)