

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.98 OF 2021

M/s. Multichem Specialities Pvt. Ltd.
Through Manager Vijay Solkar

...Applicant

vs.

Sri Krishna and Company & Ors.

...Respondents

Mr. G. Krishna M. Nair for the Applicant.

Mr. M. G. Patil APP for Respondent No.3-State.

CORAM : S. M. MODAK, J.

DATED : 10TH MARCH 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.

2. Service of notice sent through Court is awaited, however, the Applicant has filed affidavit for private service. Notice sent to Respondent No.1 has returned back with remark "unclaimed". The track consignment report is at Exhibit-E, whereas notice sent to Respondent No.2 has also returned back with remark "Item returned addressee left without instructions". Respondent No.1 is the proprietorship firm, and Respondent No.2 is proprietor of Respondent No.1-firm. The affidavit of service is taken on record and marked as

Annexure "X". The address mentioned in the notice is correct address as per the Applicant, hence it amounts to proper service.

3. The complaint was dismissed on 18th September 2021. At that time covid restrictions were there, inspite of that it was dismissed. The case for grant of special leave is made out. Hence, special leave is granted. Appeal is admitted.

4. When notice was issued on 1st February 2023, it was made clear that an endeavour will be made to dispose of the Appeal finally. In view of that Appeal is taken up for final hearing.

Unregistered criminal appeal no.

5. Learned Metropolitan Magistrate while passing the impugned order has noted down conduct of the Applicant prior to starting of the lock down.

6. My attention is invited to roznama dated 25th February 2020. It mentions that the case is fixed for warrant report. If it is so then presence of the complainant is not required on 16th March 2021, even if it is not required on 18th September 2021. The complaint can be dismissed by invoking the provisions of section 256 of the Code of Criminal Procedure, if the complainant is not appearing, however, stage of the proceeding is important. If presence of the complainant is not required, the complaint cannot be dismissed and the order cannot be said to be legal. It deserves to be set aside. The complainant needs to be given an opportunity to prosecute the complaint. In view of that

the following order is passed :

O R D E R

- (a) Appeal is allowed.
- (b) Matter is remanded to the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai.
- (c) The Appellant is directed to appear before the learned Magistrate on 20th March 2023.
- (d) The Appellant is directed to take steps for seeking presence of the Respondent-accused.

[S. M. MODAK, J.]