



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

CRIMINAL APPLICATION NO. 4057 OF 2022

**ABDUL SALIM S/O. ABDUL ALIM
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mrs. Charuta S. Deshmukh
APP for Respondent : Mr. S. M. Ganachari
...

CORAM : S. G. MEHARE, J.

DATE : 14-06-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent.
2. The applicant has impugned the order of the learned Judicial Magistrate First Class, Court No.1, Majalgaon, passed in Criminal Miscellaneous Application No.177 of 2015, dated 26.12.2018 and the order of the learned Additional Sessions Judge, Majalgaon, passed in Criminal Revision Application No.5 of 2019, dated 23.03.2022.
3. The facts in brief are that on an application under Section 156(3) of the Code of Criminal Procedure (for short, "Cr.P.C."), investigation was directed. The Investigating Officer, after making

investigation, submitted "B" summary report against the respondent/accused. The learned Judicial Magistrate called upon the applicant to file protest petition. The applicant has filed protest petition. Since the applicant did not lead evidence from 03.09.2015, the Court dismissed the complaint and accepted the "B" summary report.

4. The applicant had impugned the order of learned Judicial Magistrate before the learned Additional Sessions Judge. The learned Additional Sessions Judge considered the arguments of the respective counsel and reproduced the case in detail. He recorded the findings that the learned Magistrate gave more than ample time to the complainant to pursue Exhibit-9 in view of his request for leading evidence. It has also been observed that the learned Magistrate is not expected to act as spectator, where the complainant is neither turning to the Court nor filing any application and also not leading any evidence.

5. The failure of the complainant to appear before the Court may result in dismissal of the complaint. "B" summary report in the present matter is received in the year 2015. The learned Magistrate had correctly issued notice to the applicant before accepting "B" summary report. The protest application is an application under Section 200 of the Cr.P.C.

6. After receiving "B" summary report from the police, the burden lies on the complainant to prove that there is evidence to proceed with the matter. Such protest petition is covered under Section 200 of the Cr.P.C. The record reveals that an ample opportunity was granted to the applicant to lead evidence and prove his case, but he did not turn up to the Court. The revision application before the learned Additional Sessions Judge does not disclose the reasons for his absence which might have been considered by the Court while considering the request for proceeding with the matter. The applicant had no explanation for his absence for such a long period. In the absence of any reason to consider his absence, the Court is helpless to consider the request of the applicant.

7. The reasons for dismissing the complaint are substantiated with the facts. No reasons are forthcoming for absence of the complainant which could be considered to restore the complaint. There is no substance in the application. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE