



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 995 OF 2023

Vishnu Baliram Dhere

....Appellant
[Orig. Complainant]

VERSUS

1. Ankush Manikrao Dhere
2. Devidas Goroba Dhere
3. Vikas Machindra Dhere
4. Sandip Baburao Dhere

.....Respondents
[Orig. Accused]

.....
Mr. M.D. Gitte, Advocate for Appellant
Mr. P.P. More, Advocate for respondents
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 04th JULY, 2024

ORDER :

1. By this appeal, filed under section 378(4) of Code of Criminal Procedure, appellant/original complainant challenges the order dated 18.08.2018 passed by learned Judicial Magistrate First Class, Nilanga, below Exhibit-1, in Regular Criminal Case No. 162/2013, thereby dismissing the complaint filed by him, under section 245(2) of Cr.P.C., and discharging respondents/accused.

2. Leave to file appeal is granted to the appellant in Application For Leave To Appeal No. 225 of 2018, by order dated 18.10.2023.

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3. Heard learned advocate for appellant and learned advocate for respondents. Perused the documents placed on record.

4. Appellant filed complaint alleging that respondents/accused committed offence under sections 467, 468, 471, 420, 427 r/w 34 of Indian Penal Code. After filing of complaint in the Trial Court, when the matter was at the stage of leading evidence before charge, since appellant and his advocate remained absent on some dates, Trial Court passed the impugned order.

5. Copy of the *roznama* placed on record shows that intermittently appellant and his advocate were present and on two dates they were absent.

6. Learned advocate for respondents/accused strenuously opposed the appeal contending that since the order is passed under section 245(2) Cr.P.C., the appellant has remedy to approach Sessions Court by way of appeal against acquittal. His further submission is since the complaint is lodged in the year 2013 and complainant failed to lead evidence before charge till dismissal of complaint, the accused were under the hanging sword of pendency of criminal prosecution for more than four

years. He therefore submits that there is no merit in the appeal and appeal may be dismissed.

7. Since the private complaint filed by appellant was dismissed in default and the accused were discharged and appellant has approached this Court immediately after passing of the order, this Court is not inclined to accept the hypertechnical objection of the accused. Taking into consideration the serious allegations made in the complaint against accused persons, fair and reasonable opportunity needs to be given to the complainant to prosecute the same and prove his case on merits. Accused will have right to cross examine complainant and his witnesses in their defence.

8. Considering the fact that on most of the dates appellant and his advocate were present, Trial Court was not justified in dismissing the complaint under section 245 (2) of Cr.P.C. The impugned order is therefore unsustainable. Hence, the following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned order dated 18.08.2018, passed by learned Judicial Magistrate First Class, Nilanga, below Exhibit-1 in R.C.C. No. 162 of 2013 is hereby quashed and set aside.

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- (iii) Regular Criminal Case No. 162 of 2013 is remitted back to the Trial Court.
- (iv) Trial is expedited.
- (v) Appellant shall pay costs of Rs. 10,000/- to the accused in the Trial Court.

[NITIN B. SURYAWANSHI, J.]