



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 491 OF 2022
IN
CRIMIAL APPEAL STAMP NO. 3731 OF 2022

Ganesh Ramkrushna Jadhav Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.K.Bhoyar, counsel for applicant/appellant.

Mr. H.D.Dubey, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/11/2024.

1. This is an application for seeking leave to file an appeal against the acquittal.

2. Heard learned counsel for the applicant, he submitted that the complaint is dismissed for default, as the complainant remained absent and the accused is acquitted under Section 256 of the Cr.PC.. He submitted that it was the Covid-19 pandemic period, and the guidelines are issued by this Court to the trial Courts as to the working during the Covid-19 pandemic period is concerned. As there were restrictions on the movement of the citizens, the applicant could not attend the proceedings, and the same was dismissed.

3. He submitted that the Magistrate has invoked the power under Section 256 of the Cr.PC. erroneously and

illegally, and therefore, the appellant has every chance of success in the appeal, and he has many arguable points. In view of that, leave is granted to him to prefer the appeal.

4. Learned APP also supported the said contention. None present for the respondent No. 2.

5. Heard learned counsel for the applicant as well as learned APP, perused the Roznama as well as the impugned order passed by the Judicial Magistrate First Class Dhamgangaon Railway, it reveals from the Roznama that the matter was fixed for recording the evidence since 18/08/2018. Thereafter, there was a continuous absence of the complainant. Only on 15/02/2019, the complainant was present. As far as the contention of the learned counsel for the appellant, that Covid-19 pandemic period is concerned, the reconstructions were imposed, and the Court working was also restricted from March 2020, and thereafter the regular court working was started in August 2021. If this period is taken into consideration, then also, if the Roznama is taken to the notice. It reveals that after the Courts started working regularly, there is continuous absence on the complainant on 01/12/2021, 28/12/2021, 12/01/2022, 16/02/2022, and 10/03/2022.

6. Thus, it appears that in view of Section 256 of the Cr.P.C., the Magistrate has to adjourn the matter if he thinks it proper to adjourn the same.

Section 256 runs as follows:

256. Non-appearance or death of complainant – *It states that if the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.*

The proviso of Section 256 stats, that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

Sub-section (2) states that the provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

7. In light of the above said provision, the Roznama is taken into consideration on various occasions; the hearing of the trial was adjourned by the learned Magistrate by using Section 256 of Cr.P.C., but as there was a continuous absence of the complainant, and after due opportunity, the

complainant has not taken steps, the order is passed. I do not find any illegality in the said order. Learned counsel of the applicant, though submitted that it was the Covid-19 pandemic period, but it reveals that after the Covid-19 pandemic period is over, thereafter also, the complainant remained absent.

8. The complaint was filed in the year 2017, there are time and again directions to the trial court to dispose of the cases, which are old one. Thereafter also, the Magistrate has given sufficient opportunity to the applicant, but it was the applicant who was not diligent in exercising his rights, and therefore, the matter came to be dismissed, and the accused is acquitted.

9. Thus, there is no merit in the application. In view of the above facts and circumstances, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application (APP) No. 491/2022 is **rejected.**

[URMILA JOSHI-PHALKE, J.]