



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

CRIMINAL APPLICATION (APPA) NO.850 OF 2024
IN
CRIMINAL APPEAL STAMP NO.4679 OF 2023

Rekha w/o Rambhauji Bhasme

Vs.

Wasudeo s/o Natthuji Sawarkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H. I. Kothari, Counsel for the appellant.

Mr. A. S. Tiwari, Counsel for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/09/2024

1. By preferring this application along with the appeal. The appellant has challenged the order passed by the Judicial Magistrate First Class, Court No.3, Kotal dated 03.03.2023 by which, the criminal complaint of the complainant is dismissed for want of prosecution under Section 256 of the Code of Criminal Procedure.

2. Heard learned Counsel for the appellant as well as learned Counsel for the respondent. Perused the order passed by the Judicial Magistrate First Class and the roznama filed along with the application. The roznama shows that plea was recorded on 30.11.2019 and thereafter, matter was placed for the evidence from 03.01.2020. Sufficient opportunity was granted to the complainant from 03.01.2020 till

03.03.2023 for adducing the evidence. Even the trial Court has fixed the matter for 19.10.2022, 12.12.2022, 16.01.2023 and 03.03.2023 for dismissal of the order. But as complainant failed to adduce the evidence after sufficient opportunity, the complaint came to be dismissed for want of prosecution by using Section 256 of the Code of Criminal Procedure.

3. On perusal of the provision 256 of the Code of Criminal Procedure which shows 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 herein before 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 states 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.

4. In the light of the above provision, learned Magistrate has granted an opportunity by postponing the hearing in view of the provision and as the complainant failed to adduce the evidence for three

years, the learned Magistrate has passed an order under Section 256 of the Code of Criminal Procedure and dismissed the complaint. On perusal of the roznama, it reveals that the learned Magistrate has rightly appreciated the facts and rightly considered the provision under Section 256 of the Code of Criminal Procedure and thereafter, sufficient opportunity, after granting adjournment time to time and on failure of the complainant to adduce the evidence, the complaint was dismissed. I do not find any reason to interfere with the said order. No grounds are made out by the complainant to grant leave to prefer an appeal. In view of that, the application for leave to file an appeal is devoid merits and rejected. Accordingly, I proceed to pass following order:

The application is rejected.

(URMILA JOSHI-PHALKE, J.)