



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

931 CRIMINAL APPEAL NO. 155 OF 2020

Gunaji s/o Dagdu Rathod,
Age: 60 Years, Occu: Retired from service,
R/o: Plot No. 43, S.T. Colony,
Jadhavwadi, Aurangabad.

... Appellant

Versus

Babanrao s/o Dagduji Sukte
Age: Major, Occu: Business,
R/o: PWD residency, 96/74,
Building No.1 (first floor)
Police Colony, Ramnagar,
Tal: and Dist: Jalna.

... Respondent

...
Ms. Savita Parmeshwar Kakade (Matkar), Advocate for Appellant.
Mr. D. V. Tele, Advocate for Respondent.
...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 15th January, 2025.

PER COURT:

. This appeal is preferred against the order dated 4th May, 2018 passed by learned Judicial Magistrate First Class, Aurangabad below Exhibit – 01 in S.C.C. No.4780 of 2016. By the said order, the complaint filed by the present appellant was dismissed for want of prosecution. The impugned order reads as under :-

“Perused the record of the case and the roznamas.
This case is lying unattended since long and even the complainant and his advocate are not present. Several

orders came to passed below Exh-01, and the case came to be posted for the order of Dismissal For Want Of Prosecution. In spite of that, the complainant is absent and has not taken any steps to proceed this case further.

This case is lying unattended since long record shows that complainant not filed any application from 13.12.2017 to secure presence of accused. It appears that, complainant has lost his interest for the best reasons known to him. As a matter of last recourse, the only option available to this Court is to proceed as per section 256 of Cr.P.C. Even today, the matter came to be called repeatedly inspite of that, neither the complainant or his advocate appeared nor any steps are taken to ensure that the case proceeds further. Hence it is necessary to pass dismissal order for default of the complaint.

Order

1. The complainant is dismissed for want of prosecution.
2. Accused is acquitted.
3. Case is disposed off accordingly.”

2 The learned counsel for the appellant pointed out the Roz-nama / daily-sheet of the said trial. The daily-sheet shows that on 17th February, 2018 the case was adjourned for awaiting warrant. The next date was fixed as 23rd March, 2018. On that day, the complainant and his advocate were absent. Thereafter, the matter was kept on 4th May, 2018. On that day, the complainant and his advocate were absent. The proceeding was closed, the accused was acquitted and the case

was disposed off for want of prosecution.

3 The learned counsel for the appellant further pointed out that when the case was kept for awaiting warrant, it should not have been dismissed. The order passed by the learned Magistrate is not legal and correct. It is lastly prayed to set aside the impugned order by allowing this appeal.

4 The learned counsel for the respondent strongly opposes the appeal. He submits that there is no error in the impugned order. The learned Magistrate has rightly passed the order. It is lastly prayed to dismiss the appeal.

5 The point that emerges for consideration, is whether the impugned order is illegal, incorrect and requires interference.

6 On perusal of the *Roz-nama*, as pointed out by the learned counsel for the appellant, it appears that the matter was fixed for awaiting warrant on 17th February, 2018 and the next date fixed for awaiting warrant was 23rd March, 2018. The daily-sheet does not show as to whether the report of awaiting warrant is received or not. Ignoring of that important aspect, the learned Magistrate straightway passed the order below Exhibit – 01 that the complainant and his

advocate were absent, kept for order on 4th May, 2018 and on 4th May, 2018 the complaint was dismissed.

7 Considering all these aspects, it appears that the complaint is erroneously dismissed. The learned Magistrate ought to have called for the report of the warrant. Presence of the complainant and his advocate was not necessary on that day. The learned Magistrate ought to have called the report from the concerned police station as to why the warrant is not executed against the accused. Therefore, the impugned order is illegal, erroneous, and not sustainable in the eyes of law. The appeal therefore, deserves to be allowed and the impugned order deserves to be set aside. Hence, the following order:-

ORDER

- I. The appeal is allowed.
- II. The impugned order dated 4th May, 2018 passed by learned Judicial Magistrate First Class, Aurangabad below Exhibit – 01 in S.C.C. No.4780 of 2016, is hereby set aside.
- III. The complaint is restored to its original position.
- IV. R & P with paper-book be sent back.

- V. The accused shall remain present before the Trial Court on 1st February, 2025.
- VI. If the accused is not remaining present, the learned Magistrate is directed to proceed further as per the law, by issuing a non-bailable warrant for securing his presence.
- VII. The learned Magistrate is further directed to conclude the trial as early as possible and in any case on or before 10th May, 2025.
- VIII. The learned counsel for the appellant / complainant is directed to communicate this order to the Trial Court.
- IX. The appeal is disposed of accordingly.

[SANJAY A. DESHMUKH, J.]

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