

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 210 OF 2014

Sulochana International

... Applicant

Versus

Jhon Ferantiz And Anr.

... Respondents

.....

Mr. Utkarsh Desai i/b. Mr. Prashant Bharake, Advocate for the Applicant.

Mr. Shrikant H. Yadav, APP for the State.

CORAM : SHIVKUMAR DIGE, J.

DATED : 28th APRIL, 2025.

P. C. :

1. The applicant has filed leave to appeal application. Though respondent is served, none present for respondent No.1. On the last date, last chance was given to the respondent No.1 to go on with the matter. Today also he is not present hence, I am deciding this matter on merits.

2. It is contention of learned counsel for the applicant that applicant was pursuing the matter before the Judicial Magistrate First Class Ichalkaranji, District Kolhapur (for short "Trial Court") but the learned trial Court has not considered this fact and dismissed the complaint for non-prosecution, which is erroneous, hence requested to allow the application.

3. Learned APP submits that appropriate order be passed.

4. I have heard both the learned counsel. Perused Roznama produced

on record. From Roznama it appears that on 06.08.2012, applicant was present before the Trial Court. Thereafter, on 21.09.2012 applicant and his Advocate were absent and the Respondent-accused had filed application for exemption. Thereafter, on 15.10.2012 the applicant and Advocate for the respondent No.3 were absent then matter was adjourned on 04.12.2012. On 04.12.2012 the applicant and his Advocate were absent, on that date the learned Trial Court has dismissed the matter and acquitted respondent. While dismissing the matter, the learned Trial Court has observed that complainant and his Advocate were absent when matter was called out. The complainant has not filed say to the application below Exhibit-23. The complainant persistently absent. The complainant is not interested in prosecution therefore learned Trial Court has dismissed the complaint for non prosecution and acquitted the respondent No.1. In my view, it appears from record that applicant was pursuing the matter and he was absent for three dates i.e. 21.09.2012, 15.10.2012, and 04.12.2012. He was pursuing the matter since year 2010. Considering these facts, learned Trial Court should have given opportunity to the applicant to pursue the matter but it appears that in haste learned Trial Court has passed the order which appears to be perverse and I pass following order.

ORDER

- i. The order passed by learned J.M.F.C., Ichalkaranji, dated

04.12.2012 below Exhibit-23 is quashed and set aside.

- ii. The complaint filed by the applicant i.e. Summary Criminal Case No. 736 of 2010 is restored to file.
 - iii. The applicant shall appear before learned J.M.F.C. on 08.05.2025 at 11:00 a.m. and take steps.
 - iv. The applicant shall pay cost of Rs.20,000/- to J.J.Hospital, Mumbai.
5. The application for leave to appeal is allowed and disposed of.
 6. All concerned to act on an authenticated copy of this order.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2025.05.03
14:54:47
+0700