

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 672 OF 2025

Manish Kumar Dubey

...Appellant

Vs.

Anita Vishnukant Upadhyay
and Anr.

...Respondents

Mr. Ashwin Vasista a/w Alok D. Pandey	Advocate for the Appellant
Mr. H. J. Dedhia	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 16th OCTOBER 2025

P. C. :-

1. Heard learned Advocate for the Appellant-Complainant.
2. His complaint was dismissed by the learned Magistrate on 09.02.2023 for non-appearance. There is a reference of Special drive under Section 256 of the Criminal Procedure Code, page no. 50. The present appeal is for setting aside the said order. Leave is granted on 16.06.2025. Private service is effected on the Respondent. Affidavit of

service is there. Still no one has appeared for Respondent No. 1-accused.

3. The submission is even though there is observation of the Hon'ble Supreme Court in case of *M/s Celestium Financial Vs. A. Gnanasekaran*¹, this will not be applicable to the present case, because the appeal is already admitted. In the said judgment, there was observation that leave is not required for preferring an appeal and the Complainant treated as victim. It is true the victim can preferred an appeal as per the proviso of Section 372 of the Criminal Procedure Court before the Court before whom normally an appeal against order of acquittal lies. The judgment is by the Court of JMFC. So appeal lies before the District Court, Thane.

4. I agree to the submission on the factual aspect. I have gone through the relevant papers. Page no. 35 is certificate for treatment of the mother of the Appellant. She was suffering from cancer. Whereas page no. 44 to page no. 50 are the copies of the roznamas. We can gather the following facts:-

(i) plea was recorded on 08.01.2020.

1 (2025) SCC Online SC 1320

(ii) Thereafter, the Covid was in existence. There was entry to that effect on 20.01.2022.

(iii) From 15/03/2022 to 29/09/2022, both the parties have not remained present. On some of the occasions, exemption application was filed on behalf of the Respondent-accused.

5. In fact, learned trial court Judge ought to have considered that after 20.01.2022, the Court have started functioning in the regular way i.e. from March 2022 upto Feb 2023. So it cannot be considered a valid reason for dismissal of the complaint due to the Complainant's absence. The medical papers suggest that his mother was suffering from cancer. Instead of dismissing the complaint, learned Magistrate could have passed certain orders even by observing that the Complainant should remain present and in case of failure, complaint can be dismissed, instead of that he has dismissed the complaint. It is not proper. Considering the background of the case, the order needs to be set aside. Hence, the order:-

ORDER

(i) The appeal is allowed.

(ii) The order dated 09.02.2023 passed by 6th Addl. Chief

Judicial Magistrate, Thane in Summary Criminal Case

No. 5064 of 2017 is set aside.

(iii) The complaint restored to its original file.

(iv) The learned Magistrate is at liberty to proceed with the case.

6. Accordingly, Criminal Appeal is disposed of.

[S. M. MODAK, J.]