



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.56 OF 2025

Sau Shobha W/o. Shivram Vaidya,
Age : 60 years, Occu. : Household,
R/o. Javasgaon, Tq. Badnapur,
Dist. Jalna.

... Applicant
(Orig. Complainant)

Versus

Lilabai W/o. Rambhau Supekar,
Age : 46 years, Occu. : Household,
R/o. Shivnagar, Old Jalna,
Tq. & Dist. Jalna.

... Respondents
(Orig. Accused)

.....
Ms. Vanita H. Sangole, Advocate for Applicant.
Mr. Govind G. Suryawanshi, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16 JANUARY, 2026

PRONOUNCED ON : 17 JANUARY 2026

ORDER :

. Present application is for leave to file appeal against order passed by learned Judicial Magistrate First Class, Badnapur, Dist. Jalna, dated 01.08.2024 dismissing the complaint for want of prosecution by invoking section 256 of the Code of Criminal Procedure.

2. Learned counsel for applicant pointed out that, complaint bearing S.C.C. No. 168 of 2017 was instituted for

commission of offence under section 499, 500 and 501 of the Indian Penal Code. That, by order dated 06.10.2017, the learned J.M.F.C., after perusal of the complaint and documents on record, was pleased to issue process against the respondent. After passing the order for issuance of process, the summons were not served upon the respondent. Thereafter, a warrant was also issued; however, the same could not be executed against the respondent. Consequently, the applicant also filed applications seeking issuance of a show-cause notice to the Superintendent of Police, Jalna, for non-service of the summons and non-execution of the warrant..

3. Learned counsel for applicant further submitted that, the applicant was present every date before the learned trial court, but, she could not attend the proceedings during the COVID-19 period and on some dated during the last one year due to her illness, namely "Arthritis". She further submitted that, her husband is suffering from heart disease and has undergone bypass surgery. Due to these unavoidable medical reasons, the applicant could not attend the court proceedings. Reasons for non prosecution were due to Covid pandemic and as such failure to prosecute. Moreover, according to learned counsel, learned trial Judge also failed to consider the continuous absence of accused in causing appearance. Therefore, in the interest of justice, she prays

to set aside the impugned order by restoring the complaint back on the file of learned JMFC and leave to appeal to this extent may kindly be granted.

4. In answer to above, learned counsel for respondent pointed out that, complaint was lodged in the year 2017. According to him, though process was duly issued and the accused had appeared before the Court, the complainant failed, not merely once but on several occasions to diligently prosecute the matter. He further submitted that in view of the prolonged and continuous absence of the complainant, the learned Trial Judge was justified in dismissing the complaint for want of prosecution, which is permissible under law. Consequently, it is prayed that, the leave application be rejected.

5. After hearing the submissions so advanced and on going through the papers, it seems that, present applicant had instituted proceedings bearing S.C.C No. 168 of 2017 on 21.07.2017. Copy of roznama shows that matter was adjourned from time to time and both parties were absent on several occasions. NBWs were issued to accused. Since long time, complainant and his advocate were absent and matter was pending for steps. Finally by order dated 01.08.2024 impugned order has been passed.

6. Considering the above, complaint is apparently dismissed only for want of prosecution. The material on record indicates that the absence was sought to be explained on medical grounds and during the COVID-19 pandemic. Therefore, to secure the ends of justice and in view of oral undertaking of learned counsel to henceforth diligently prosecute the matter before the trial court, the application for leave to appeal deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) List the appeal for further consideration on 19.01.2026

(ABHAY S. WAGHWASE, J.)