



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 38 OF 2026

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

... Appellant
(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 Appellant.
Mr. Govind G. Suryawanshi, Advocate for Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 16 FEBRUARY, 2026

ORDER :

. Record shows that initially leave to file appeal was sought by filing application bearing ALP No.56 of 2025. This Court vide order dated 17.01.2026, allowed the said leave application and directions were issued to register the appeal.

2. Learned counsel for appellant 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, the learned J.M.F.C. was pleased to issue process against the respondent. After 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 appellant 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 appellant further submitted that, the appellant 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 appellant could not attend the court proceedings. 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 J.M.F.C.

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.

5. Perused the order dated 01.08.2024. Complaint is of 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. Complainant and his counsel failed to appear and take steps on several dates, and therefore, the learned trial court passed the order of dismissal for want of prosecution.

6. Learned counsel for the appellant also assures to be diligent in conducting the matter henceforth.

7. 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. Complainant cannot be deprived of his right to prosecute accused if at all there is case made out to that extent. Resultantly, it would be just and proper to remand the matter back to the learned trial court, who shall afford opportunity to both sides to adduce their respective evidence and come to its independent conclusion. Accordingly, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The impugned order dated 01.08.2024 passed by learned Judicial Magistrate First Class, Badnapur in S.C.C. No. 168 of 2017 is hereby set aside.
- III. Matter is remanded back to the file of learned Judicial Magistrate First Class, Badnapur, who shall conduct hearing afresh and decide the same according to law.
- IV Parties shall appear before the learned trial court on 26.02.2026 and further dates and future course shall be decided by the learned trial Judge.
- V. The appeal is disposed off accordingly.

(ABHAY S. WAGHWASE, J.)