



MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 219 OF 2019**

Vivek Balaji Bhawe And Anr. ... Applicants

Vs.

Prabhakar Ganpat Halte And Ors. ... Respondents

Mr. Vinod Rane i/b Rane & Co. for the Applicants.

Mr. D. J. Haldankar, APP for the State.

CORAM : GAURI GODSE, J.

DATED : 5th DECEMBER 2025

ORDER:

1. This application is filed under Section 378(4) of Criminal Procedure Code seeking leave to file an appeal to challenge the order passed by the learned Magistrate dismissing the complaint for want of taking steps.

2. Copy of the compilation of additional documents tendered by the learned counsel for the applicants is taken on record.

3. Learned counsel for the applicants submits that the entries in the roznama were incorrectly recorded that the case was adjourned in the caption of not heard cases. He submits that all the steps were taken, and the complaint was pending for service of summons. Learned counsel for the applicants relies upon a tabular format reproduced in the present application in paragraph 18. He submits

that, when the presence of the complainant was not necessary, there was no reason to dismiss the complaint on the ground of absence of the complainant. He relies upon the decision of the Apex Courts in ***M/s. BLS Infrastructure Limited Vs. M/s. Rajwant Singh & Others***.¹ He submits that the Apex Court held that when the personal attendance of the complainant is not necessary, the learned Magistrate can dispense with the personal attendance and proceed with the case. He therefore, submits that even in the present case, personal attendance of the complainant was not necessary. Hence, the order be set aside, and the complaint be restored. He therefore, submits that leave to file appeal be granted.

4. The certified copy of the roznama tendered today shows that on 27th July 2018, the complainant was absent with his advocate when called out. The entry further records that accused is absent with advocate. In the tabular format in paragraph 18 of the application, the next date of 14th December 2018 also shows that the complainant is absent and advocate is present. On the next date in the table it shows that on 15th February 2019, the complainant is absent advocate is present. The entry further records in the table that oral request for adjournment to verify the addresses of the accused. In the certified copy of the roznama on 27th July 2018, the

1. (2023) 4 SCC 326

next date assigned was 29th September 2018. However, learned counsel for the applicants has not produced further entries of the roznama.

5. The next entry which is part of the certified copies shows the date as 14th December 2018, where again the entry is that complainant is absent his advocate is present and accused absent. The order dismissing the complaint is dated 15th February 2019. The entry of 15th February 2019 in the table mentioned in paragraph 18 also records that the complainant is absent since long and no steps have been taken. This entry is not disputed by the applicants. In the absence of any material that the entry in the roznama on 27th July 2018 that the case was adjourned as 'not heard cases' and that the complainant and his advocate were absent is incorrect, no fault can be found in dismissal of the complaint by the impugned order.

6. The application is bereft of any explanation about the absence of the complainant and his advocate on 15th February 2019. There is no material shown that the complaint was pending only for service of summons and that no steps were required to be taken by the complainant to prosecute the complaint. Hence, the oral submissions made on behalf of the applicants that the entries in the roznama are incorrect cannot be accepted without a specific

statement in the application giving reasons why the entries in the roznama are incorrect. Hence, I see no reason to grant any leave to file an appeal, in the absence of any grounds made out to file an appeal.

7. At this stage, learned counsel for the applicants insist that the advocate was present on 15th February 2019. However, he was unable to point out any material to show that he was present. The application is completely bereft of any explanation or a statement that on the date when the complaint was dismissed, the advocate or the complainant were present. There is no material to support the submission that there was no compliance to be made by the complainant or his advocate and hence, the order is incorrect. Thus, there is no case made out to challenge the impugned order.

8. In the Apex Court's decision relied upon by the learned counsel for the applicants, it is held that there was a specific averment in the Special Leave Petition that the appellant had led its evidence and thereafter had moved an application under Section 311 of Cr.P.C. to summon and examine further witnesses. Hence, it was held that the personal attendance of the complainant could have been dispensed with and the Trial Court could have proceeded to decide the application. Therefore, it was held that the dismissal of

the complaint was not justified. In the facts of the present case, as discussed above no such ground is shown for dispensing with the personal attendance of the complainant and proceeding with the complaint. Even the advocate's absence is not explained. Hence, the principles settled in the decision of the Apex Court would not be of any assistance to the applicant.

9. For the reasons recorded above, the application is dismissed.

(GAURI GODSE, J.)