



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 219 OF 2019

Vivek Balaji Bhavé And Anr.

...Applicants

Versus

Prabhakar Ganpat Halte And Ors.

...Respondents

Mr. Vinod Rane a/w Mr. Amol Joshi i/by Rane & Co., Advocate for the Applicants.

Mr. N.B. Patil, APP for Respondent – State.

CORAM : M. M. SATHAYE, J.

DATED : 12 SEPTEMBER 2024

P.C.:

1. Heard learned counsel for the Applicants.
2. This is an application under Section 378(4) of Criminal Procedure Code, 1973 ('CrPC' for short) seeking leave to file appeal against Judgment and Order dated 15 February 2019, passed in Case No.375/SW/2013, by Metropolitan Magistrate, 26th Court, Borivali, Mumbai.
3. Perusal of the impugned order shows that it is a one line which reads thus - "Complainant is absent since long and not taking steps. Hence, application is dismissed for want of steps."

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4. Learned counsel for the Applicants has invited this Court attention to Paragraph No.18 of the application, wherein the manner in which the case has proceeded date wise, has been set out in detailed tabular form. He submitted that the complainant was present attending the matter most of the times, however on the date of impugned Order, he/she was absent but their Advocate was present. He has relied upon the Judgment of the Hon'ble Supreme Court in the case of *M/s. BLS Infrastructure Limited V/s. M/s. Rajwant Singh & Others*¹

5. I have perused Paragraph Nos. 5, 6 and 8 of the said Judgment as also provisions of Section 256(1) of CrPC referred in the Judgment. Apparently, the Magistrate has power under proviso of Section 256(1) to dispense with the attendance of the complainant if he/she is represented by a pleader or by officer conducting the prosecution. In almost similar set of facts, the Hon'ble Supreme Court has restored the proceedings for hearing on merits.

6. Learned counsel for the Applicant urged that despite this legal position, by the impugned Order, the complaint is dismissed resulting in acquittal of the Respondent / Accused.

1 Criminal Appeal Nos. 657-664 of 2023 dated March 01, 2023.

7. Issue notice to Respondents, returnable on 10 October 2024.
Learned APP waives service for Respondent No.8 – State. In addition to
Court notice, private notice is permitted.

(M. M. SATHAYE, J.)