



Criminal Case No.65417/2015

Order below exhibit-1

1. Today despite of repeated call outs neither complainant nor his advocate remain present before the Court till 5:30 P.M. This case is filed under section-138 of N.I.Act.
2. Record and proceedings of the case demonstrates that notice was issued to the complainant. Same is on record at exhibit-13. This case was repeatedly adjourned then-after. Attempt made by Court to secure presence of complainant was not successful. This is pending for production of new address of accused by complainant since long. Since then matter is pending in sine-die condition.
3. Despite of ample opportunities made available to the complainant, complainant did not remain present before the Court. I may only say that Law Courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. At this juncture this Court can also refer herein judgement of Hon'ble Bombay High Court delivered in case of **Ramzan Khan Vs. Khadi Tours reported as 2019(5) Mh.L.J.(Cri.) 20.** Hon'ble Bombay High Court was pleased to observe this in this judgement.

“6. When the complaint and/or proceedings is filed by the litigant before the Court of law, it is onerous duty to prosecute the same diligently. The applicant cannot be dormant for years together as observed in the present case. Unless and until the non-applicants are served in the proceedings before the Court below, the said proceedings

could not proceed further. Since it is a private complaint, it was duty of the applicant/complainant to take all necessary steps to serve the non-applicants.

*8. Unnecessary filing of complaints and/or after filing of complaints, no step is taken and, therefore, the Courts are unnecessarily burdened and learned Judge below is unable to devote time for the litigants who are diligently prosecuting their proceedings has to remain in queue. This type of attitude on the part of the litigants has to be curbed though it is the right of citizens to approach to the Court of law for redressal of their grievance, if any. **At the same, time, it is the duty of such citizens to prosecute the remedy availed of diligently and should not allow proceedings to remain in a dormant state for years together.***"

4. In this circumstances it would be profitable to refer judgment of Hon'ble Supreme Court in case of S. Rama Krishna Reddy Vs. S. Rami Reddy reported in AIR 2008 SC 2066. In this judgment Hon'ble Apex Court held that **"Complainant cannot allow a case to remain pending for an indefinite period."** Further Hon'ble Gujarat High Court has adopted same view in judgment passed in Criminal appeal no. 2405 of 2009 between Bhavani Textiles Mills Vs. State of Gujarat dated 18/01/2010.
5. Hon'ble Gujarat High Court in a judgment reported in **ACR 2011 (II) 268 (GUJ) KANUBHAI ISHVARBHAI PATEL VS. BHARATBHAI JASHBHAI PATEL** has upheld the order of dismissal of the complainant for the negligency of the complainant. Hon'ble High Court has held in para 4 that;
"4. From the papers, it also appears that the learned counsel for the appellant-complainant had never bothered to pray before the learned Trial Court for nonattendance of the respondent-saccused. I have perused the said provision also. During the six years, the complainant has never

bothered to appear before the learned Trial Court and never bothered to proceed with the matter. ***It appears that due to sole negligency on the part of the complainant, complaint of the complainant was dismissed by the learned Trial Court. I have not found any substance in present appeal."***

6. Looking to above-mentioned facts and circumstances of the case I am of the opinion that complainant is no-more interested in proceedings of the case. Consequently, following order is passed.

Order

Complaint is hereby ordered to dismiss for want of prosecution on part of complainant.

Order signed & pronounced in open Court today.

Date : 30/09/2021

(Vikram Karsanbhai Solanki)

Surat.

19th Additional Chief Judicial Magistrate,

Surat.

Judge Code :- GJ-01099