

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 216 OF 2021
IN
CRIMINAL APPEAL NO. 868 OF 2022

Shri Pramod S/o. Sohanlal Chandak,
Aged about 52 years, Occupation: Business,
R/o. Ramnagar, Akola, Tahsil & District:
Akola, Police Station Civil Lines, Akola.

.... APPELLANT.

// **VERSUS** //

Dr. Shri Vijay S/o. Radhakisanji Verma,
Aged adult, Occupation : Business,
R/o. Behind Police Station Paratwada,
Tahsil : Achalpur, District : Amravati,
Police Station, Paratwada.

.... RESPONDENTS.

Shri N.M.Jibhkate, Advocate for Appellant.
Shri S.A.Mohta, Advocate for Respondent

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 12, 2022.

ORAL JUDGMENT :

CRI.APPLN.NO. 216/2021.

For the reasons stated in the application and as the arguable points are involved, the leave to file appeal is granted.

The Criminal Application is **disposed of** accordingly.

Appeal be registered.

CRI. APPEAL NO. 868 /2022.

1. Heard.
2. **ADMIT.** Heard finally by consent of the parties.
3. This is an appeal arising out of the order dated 16/12/2019 passed by Judicial Magistrate First Class, Court No.2, Akola in Summary Criminal Case No. 3255 of 2010 thereby dismissing the complaint under Section 256 of the Code of Criminal Procedure (Cr.P.C.) by recording reason that the complainant was absent and neither adjournment was sought nor steps were taken to secure the presence of the accused.
4. After going through the Roznama (Order-sheets) filed along with the appeal it can be seen that on the date of dismissal of the

complaint an application was moved by the complainant/ appellant for issuance of warrant against the accused to secure his presence. Thus, the reasons recorded by the trial Court, are erroneous and contrary to the record.

5. Shri Mohta, learned counsel for the respondent, though opposing the present appeal, he is not disputing the correctness of the order-sheet of the trial Court.

6. In these circumstances, as the reasons recorded by the learned trial Court while dismissing the appeal are erroneous, the impugned order needs to be quashed and set aside. Accordingly, I pass the following order:

- i) The Criminal Appeal is **allowed**.
- ii) The order dated 16/12/2019 passed below Exh.1 by Judicial Magistrate First Class, Court No.2, Akola in Summary Criminal Case No. 3255 of 2010 is hereby quashed and set aside.

- iii) The matter is remanded back to the trial Court for trial.
- iv) Both the parties shall appear before the trial Court on 19/12/2022 at 11:00 a.m. and thereafter as and when directed by the trial Court.

The Criminal Appeal is **disposed of** accordingly.

(ANIL S. KILOR, J)

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