



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.39 OF 2024

SHIV PIPES

Through its Authorized Partner

AVINASH WAMAN PHADKE

Age: 60 Years, Occu: Business,

R/o :Plot No.34, Anand Nagar,

Nanded

... Applicant

Versus

PRANAV AGENCIES

Through its Proprietor

PUNJABRAO CHAVAN

Age: Major, Occu: Business,

R/o: Main Road, Ardhapur,

District Nanded

... Respondent.

...

Mr. Satyajit S. Bora, Advocate for Applicant.

Mr. G. G. Suryawanshi, Advocate for Respondent sole.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 APRIL, 2024

PRONOUNCED ON : 05 APRIL, 2024

ORDER :

1. Instant leave application is at the behest of original complainant, whose proceedings under section 138 of Negotiable Instruments Act ended up in acquittal of respondent.

2. Learned counsel pointed out that, proceedings bearing S.C.C. No.2307 of 2016 was instituted against present respondent alleging offence punishable under section 138 of N.I Act. After all

essential procedural steps were completed, complaint was filed and duly registered. It is further pointed out that, on satisfaction, learned trial court also issued process on 21.04.2018. However, finally complaint to be dismissed by exercising powers under section 256 of the Code of Criminal Procedure (Cr.P.C.) i.e. for want of prosecution. It is pointed out that, in fact matter had reached to a stage where service of summons of accused was awaited, but learned trial court passed above order. He pointed out that, this court had on earlier occasions, set aside such order and had directed trial court to proceed with the matter by giving fair opportunity to both sides. Copies of the same are annexed herewith. Hence, prayers for granting leave and if possible to remand the matter to trial court with directions to take it to the logical end.

3. Learned counsel opposed on the ground that, there was no prosecution for long time. Therefore, learned trial court committed no error in exercising powers under section 256 of Cr.P.C. He prays to refuse leave.

4. Heard. Perused the papers. Proceeding bearing S.C.C. No. 2307 of 2016 seems to be instituted against present respondent alleging business transaction regarding sale and

purchase of pipes and accused issuing cheques towards repayment of the same, but the same were dishonoured and even when after dispatch of statutory notice, cheque amount was not paid, above proceedings were instituted on 27.10.2016.

5. Record shows that, learned trial court on 21.04.2018 issued process, thereby issuing summons to the accused. It seems that, on 06.03.2023 finding complainant and his advocate absent, it is ordered that, no effective steps are taken since long and hence matter was posted for dismissal for default on next date. Finally on 29.04.2023 impugned order seems to have been passed by observing that complainant is not interested in proceeding the matters and no steps being taken since long, by invoking powers under section 256 of Cr.P.C., accused came to be discharged. Said order is now challenged and heavy reliance is placed on previous order of this court in Criminal Appeal No. 130 of 2017 and ALP No. 48 of 2019.

6. There is no serious challenge by respondent. Apparently, accused seems to be discharged on sole ground of non persecution. Learned counsel for applicant read over the submissions regarding henceforth to be due diligent in conducting the matter without fail.

7. Considering the above, as a fair opportunity, leave is required to be granted. Hence following order :

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) List the appeal for further consideration on 12.04.2024.

(ABHAY S. WAGHWASE, J.)