



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CRIMINAL APPEAL NO. 316 OF 2024

Madhusudhan Vishwanath Amrutsagar
Age 47 years, Occupation Service,
R/o Forest Colony, Nagao Bari, Dhule,
District Dhule.

... Applicant
[Orig. Complainant]

Versus

Pratima Balasaheb Pawar
Age 42, Occupation Service,
Through : Suresh Pandit Agale,
Residing at Sai Vihar-1, In front of Naik
Hospital, Kothe Galli, Dwarka Circle Nashik
R/o: M.V.P. Samaj College of Social
Work, IMRT, Nashik, Shivaji Nagar, MVP
Campus, Nashik, District Nashik

... Respondent
[Orig. Accused]

.....
Advocate for Appellant : Mr. L. S. Mahajan
Advocate for Respondent : Mr. M. R. Wagh
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 19 APRIL 2024

ORDER :-

1. Heard.
2. Record shows that initially, leave to appeal was sought by filing Application for Leave to Appeal by Private Party No. 17 of 2024. This Court vide order dated 15.03.2024 allowed the said leave and

directions were issued to register the appeal. Para 5 of the said order reads as under :

“5. Heard both sides. Perused roznama. It seems that, proceedings under section 138 of N.I. Act bearing S.C.C. No. 1086 of 2019 were instituted. It seems that, learned trial court also issued process on 21.06.2019. Thereafter, on various dates Advocate of the applicant seems to have attended the case, however, only for want of taking steps the complaint seems to have been dismissed in default.”

3. In view of the above order, it is clear that trial has not been conducted. Complainant cannot be deprived of his right to prosecute accused if at all there is case made out to that extent. Resultantly, it would be just and proper to remand the matter back to the learned trial court, who shall afford opportunity to both sides to adduce their respective evidence and come to its independent conclusion. Hence, following order is passed:

ORDER

I. The appeal is partly allowed.

II. The impugned order dated 24.03.2023 passed below Exhibit 1 in S.C.C. No. 1086 of 2019 by the J.M.F.C. (Court No.3), Dhule is hereby quashed and set aside.

- III. The matter is remanded back to the trial court.
- IV. Parties to appear before the learned trial Judge on 14.06.2024.
- V. The learned trial Judge to give opportunity to both sides to adduce evidence, conduct trial and decide the matter on its own merits.
- VI. The appeal is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]

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