



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 363 OF 2024

SHIV PIPES

Through its Authorized Partner

AVINASH WAMAN PHADKE

Age : 60 Years, Occu: Business,

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

Nanded.

... Appellant

Versus

PRANAV AGENCIES

Through its Proprietor

Punjabrao Chavan

Age: Major, Occu: Business,

R/o: Main Road, Ardhapur,

District Nanded.

... Respondent

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Mr. Rani Bharuka-Bora, Advocate h/f Mr. Satyajit S. Bora, Advocate
for the Appellant.

Mr. J. B. Paikrao, Advocate h/f Mr. Govind G. Suryawanshi, Advocate
for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 26th JUNE, 2024.

ORDER :

1. Heard.

2. Record shows that initially leave to file appeal was sought by
filing application no. 39 of 2024. This Court vide order dated
05.04.2024, allowed the said leave application and directions were

issued to register the appeal. Relevant portion in para 5 of the said order reads as under :

“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 matter and no steps being taken since long, by invoking powers under section 256 of Cr.P.C., accused came to be discharged.”

3. It can be seen from the *roznama* that the matter was under await summons category since long time and therefore could not proceed further. Learned counsel for the applicant also assures to be diligent in conducting the matter henceforth.

4. In view of the above, 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. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed in terms of prayer clause (b).
- II. Parties are directed to appear before the trial court on 11.07.2024 and co-operate in conducting the trial.
- III. Learned trial Judge to expedite the hearing of the case by giving opportunity to both sides to adduce evidence, and decide the matter on its own merits.

[ABHAY S. WAGHWASE, J.]