



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1046 OF 2023

Vaishali Krushi Seva Kendra, Sangamner,
Tal. Sangamner, Through its proprietor,
Akshay s/o Sahebrao Shinde
Age: 25 years, Occu.: Business,
R/o: Maldadroad, Sangamner,
Taluka Sangamner,
District Ahmednagar.

... Appellant
[Orig. Complainant]

versus

1. Kanifnath Krushi Seva Kendra,
Taklimiya, Through its proprietor,
Dadasaheb s/o Gorakshanath Kolse,
Age 49 years, Occu Business,
R/o: Musalwadi Road, Taklimiya,
Taluka Rahuri, Dist. Aurangabad.

[Orig. Accused]

2. The State of Maharashtra.

... Respondents

.....

Mr. K. N. Shermale, Advocate for the Appellant.

Mr. Y. R. Shinde h/f Mr. R. R. Karpe, Advocate for Respondent No.1.

Mr. N. D. Batule, APP for Respondent No.2-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 29.01.2024

Pronounced on : 01.02.2024

ORDER :

1. Heard.

2. Record shows that initially leave to file appeal was sought by filing application No. 54 of 2022. This court [Coram : Sandipkumar C. More, J.] vide order dated 13th October 2023, allowed the said leave and directions were issued to register the appeal after removal of office objections. In para 5 of the said order, it is observed as under :

“5. However, it is significant to note that prior to it’s dismissal, the aforesaid case was transferred from one Court to another Court vide order of District Judge dated 31.05.2021 on 07.07.2021. The Roznama dated 07.07.2021 produced on record clearly indicates the same. Further, it is also necessary to intimate both the parties about such transfer of case from one Court to another. The order dated 08.03.2022 does not reflect anything that such notice on transfer was issued to the parties. Moreover, on the said date the matter was not fixed for taking steps by the complainant, but it was for receiving the report of summons issued to the respondent/accused. As such, arguable case is made out by the applicant/complainant, and therefore, the application stands allowed in terms of prayer clauses (A) and (B). The appeal be registered after removal of office objections, if any.”

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, I proceed to pass the following order:

ORDER

- I. The appeal is partly allowed.
- II. The impugned order dated 08.03.2022 passed below Exhibit 1 in Summary Criminal Case No. 1547 of 2018 by the Additional Chief Judicial Magistrate (Court No.2), Sangamner is hereby quashed and set aside.
- III. The matter is remanded back to the trial court.
- IV. The learned trial Judge to give opportunity to both sides to adduce evidence, conduct trial and decide the matter on its own merits.
- V. The appeal is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]