

ORDER BELOW EXH.01
(PASSED ON 23/03/2026)
MHPU07-000010-2015

Perused record. Case is old and pending for 10 years for securing presence of accused namely **Arif Shamshuddin Shaikh**. Despite of issuance of non-bailable warrant and proclamation time to time, his presence could not be secured by the prosecution during entire period. It appears that, presence of accused cannot be secured in near future.

2. As per contentions of Prosecution, incident has occurred in the year 2014. On 03/02/2014 Complainant **Sherebahaddur Biswa Karma** completed his journey with his family by Hyderabad Express and reached at Pune Railway Station at 09.00 p.m. The complainant went to Platform No. 4 to board the local train to go to the Kasarwadi Railway Station. At about 10.00 p.m. accused committed theft of wallet of complainant having amount Rs. 2700/- and other documents. Thereafter, complainant lodged report before Government Railway Police Station, Pune. Accordingly, Crime bearing No. 194/2014 for the offence punishable under **Section 379** of I.P.C. came to be registered against the accused. Record shows that, accused has absconded since filing of charge-sheet. Hence, case is pending for his appearance and for framing of charge.

3. As the Prosecution could not secure presence of accused within time, case proceeded under **Sec. 299** of Cr.P.C. as per order passed below Exh. 1 on 01/01/2026. Accordingly, witness summons were issued against all witnesses to proceed under **Section 299** of Cr.P.C. Witness no. 1 **Tanvir Rashid Shaikh**, Witness no. 2 **Pankaj Pramod Mule** and Witness no. 3 **Amit Laxman Gawari** appeared before Court and led their evidence below **Exh. No. 25, 31**

and **32** respectively. Apart from them, prosecution could not secure presence of remaining witnesses within time. Hence, evidence of Prosecution is closed on 21/01/2026.

4. Tanvir (P.W.1) deposed that, on 19/09/2014 Amit Gaware of G.R.P, Pune has called him at Railway Police Station for Panchanama. At that time, Arif Shaikh was present there. Said Gaware took search of Arif, but nothing was recovered from him. Police has called him on 20/09/2014. Accused Arif Shaikh voluntarily stated before him that, he had stolen a wallet from Local Train. Gaware then prepared Memorandum Panchanama **Exh. 27** in his presence. Accused Arif further stated that, he has kept stolen money in his house at Dapodi. After that, panch witness and other Police staff reached at the house of accused. Accused produced said wallet and Gaware Police seized said wallet in the presence of panch witnesses and prepared Seizure Panchanama below **Exh. 28**.

5. Pankaj (P.W. 2) deposed that, in the year 2014 he was working at C.I.B., Lohmarg Police Station, Pune as Police Constable. On 19/09/2024 he was appointed at Pune Railway Station to keep the watch on suspected criminals. At that time, P.C. Rakshe, P.N. Gawari and P.H.C. Sonwane were present with him. They saw one person was suspiciously checking pockets of passengers. They confronted him and brought him to the Police Station. Accused disclosed his name as Arif Shamshuddin Shaikh. Accused informed to the Police that, he has kept stolen property at his residence. After that, they went to the address of accused at Dapodi. Accused took out Rs. **1200/-** from the kitchen of his house and gave it to the Police. Police Naik Gaware seized said money and prepared Seizure panchanama in his presence.

6. Amit (P.W.3) deposed that, in the year 2015 he was working at C.I.B., Lohmarg Police Station, Pune as Police Naik. He investigated Crime No. 194/2014. On 19/09/2014, he was appointed at Pune Railway Station for keep the watch on suspected criminals. At that time, he was on patrolling duty accompanied with P.C. Rakshe, P.C. Mule and P.H.C. Sonwane. On platform No. 4 of Pune Railway Station they saw one suspicious person. He brought the accused to the Police Station. Accused admitted that he has stolen one wallet in Local Train before 15 days ago. He had spent some rupees out of Rs. 2400/-. It is deposed that, he arrested the accused and prepared arrest panchanama below **Exh. 26** in presence of two panch witnesses. On 20/09/2014 accused voluntarily disclosed whereabouts of stolen articles. They went to the house of accused at Dapodi. Accused took out Rs. 1200/- from the kitchen and gave it to the Police. Witness seized said money and prepared Seizure Panchanama below **Exh. 28**. He recorded statements of other witnesses and filed a charge-sheet against accused in the Court.

7. Heard learned APP Smt. A.S.Kale. She submitted that, accused is proclaimed offender, so necessary order be passed. Accused has absconded and there is no immediate prospect of arresting him as provided under 1st part of **Section 299(1)** of the Criminal Procedure Code. When the accused is arrested and put up for trial, deposition of witnesses whose evidence is recorded below **Exh. No. 25, 31 and 32** is intended to be used as an evidence against him in the trial. In short, the situation which would arise after the arrest of accused in future would be the same at present pertaining to the factual aspects of the case.

8. Accused is absconding since long time. Status of present proceeding is stale and ineffective. Accordingly, I have to consider evidentiary value recorded under **Section 299** of the Criminal Procedure Code that too whether same is sufficient to warrant the conviction of accused in the event of securing his presence in future. If evidence is not sufficient to warrant the conviction then there is no propriety to keep this proceeding pending for indefinite period. Hence, to save the time of Court, Police machinery and prosecutor it is desirable to pass appropriate order considering the provisions of **Section 299** of the Criminal Procedure Code by applying provision of **Section 33** of the Evidence Act.

9. In order to constitute offence U/Sec. 379 of I.P.C., prosecution needs to prove dishonest intention of the accused to take movable property without consent of the informant. No doubt wallet is movable property, but prosecution has failed to prove dishonest intention and taking away said wallet without the consent of complainant. Prosecution could not produce informant i.e. Shere Bahaddur Karma before the Court. His oral evidence is the most important part of proving the offence of theft. Ownership of stolen wallet and money is not proved by the prosecution. Essential ingredients of the offence of theft needs to be proved beyond reasonable doubt in order to arrive at the conclusion that, accused has committed present offence. In the case in hand, apart from the Investigating Officer and Panch witnesses, Prosecution could not secure presence of important and material witnesses. In absence of such oral evidence, nothing can be gathered from the testimony of I.O. Hence, considering the oral evidence on record, offence under **Section 379** of I.P.C. is not made out against the accused. Therefore, accused is liable to be discharged from the offence. Thus, I pass following order-

ORDER

1)	Accused Arif Shamsuddin Shaikh is discharged from the offence punishable Section 379 of the Indian Penal Code, vide Section 239 of Code of Criminal Procedure.
2)	Bail bonds if any, of the accused are canceled.
3)	The seized muddemal i.e. Cash of Rs. 1200/- be given to the informant as per rules after appeal period is over. If the informant is not found within reasonable time said amount be credited to the Government account as per rules.
4)	Proceeding is closed.
5)	Non-ailable warrants issued against are canceled.

(Dictated and Pronounced in open court.)

Date : 23/03/2026
Place : Pune.

(**N.J.Chavan**)
Judicial Magistrate, F. C.,
Railway Court, Pune

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per Original Order.

Name of the Steno	:	R.R.Kshirsagar (Stenographer Grade III)
Name of the Court	:	N.J.Chavan Judicial Magistrate First Class Railway Court, Pune.
Date of Order	:	23/03/2026
Order Signed by PO. on	:	23/03/2026
Order uploaded on	:	23/03/2026