

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1438 OF 2015

Rahuldeo s/o Devidas Patole (Patil),
Age : 30 years, Occupation : Nil,
Residing at Darshan Vihar House No.9,
Near Deshmukh Hospital,
Beed Bye Pass, Satara Area,
Aurangabad.

...PETITIONER

-VERSUS-

1 Manisha w/o Rahuldeo Patole (Patil),
 nee Manisha d/o Tejrao Mankape,
 Age : 26 years, Occupation : Service,
 R/o c/o Tejrao Sonaji Mankape,
 Mirajgave Vishwanagari, House No.C-28,
 Devlai Road, Aurangabad.

2 The State of Maharashtra.

...RESPONDENTS

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Advocate for Petitioner : Shri Surve Hemant.
APP for Respondent No.2/ State : Shri S.G.Karlekar.
Advocate for Respondent No.1 : Smt.R.V.Ghule-Palve.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 I have heard Shri Surve, learned Advocate for the Petitioner and Mrs.Ghule-Palve, learned Advocate for Respondent No.2, for quite sometime.

3 A short issue has been raised for consideration of this Court.

4 Criminal Appeal No.148/2013 was filed by the present Respondent No.1 against the Petitioner and few other persons. By order dated 06.10.2015, the Criminal Appeal was dismissed in default. An application dated 16.10.2015 was filed by the present Respondent No.1 which was registered as Criminal Miscellaneous Application No.244/2015. Needless to state, the said application for restoration was filed within 30 days from the date of the dismissal of the appeal in default.

5 The issue is as to whether, the Respondents in appeal, who were non-applicants in the application for restoration, are required to be heard before restoring the appeal.

6 Shri Surve, learned Advocate for the Petitioner, has made a solemn statement that the Petitioner had appeared in Criminal Appeal No.148/2013 and the Roznama in the said proceedings would indicate that the notice was served on the Petitioner. He further submits that the

notice was issued to all the Respondents in the appeal as is evident from the order appearing on the cause title of the criminal appeal. The notice was made returnable on 21.08.2013. Similarly, on 21.08.2013 the learned Sessions Judge directed calling of the record and proceedings.

7 Shri Surve, therefore, submits that notwithstanding whether, any respondent in the appeal has appeared before the Sessions Judge or not, the fact remains that the notice was issued to the respondents in the appeal. He hastens to clarify at the cost of repetition that the Petitioner had appeared in the appeal.

8 Mrs.Ghule-Palve, learned Advocate for Respondent No.2, strenuously supported the impugned order. The contention is that none had appeared in the appeal. There was no requirement to hear the respondents in the appeal when it comes to deciding the criminal miscellaneous application for restoration of the appeal.

9 I am unable to accept the contentions of Mrs.Ghule-Palve.

10 It appears that as the notice was issued by the learned Sessions Judge, all the respondents in the criminal appeal were sought to be made aware of the pending proceedings. The Petitioner submits that he

had appeared in the proceedings. In this backdrop, in my view, the learned Additional Sessions Judge could not have allowed the application for restoration ex-parte and that too by passing an unreasoned cryptic order.

11 In the light of the above, this Criminal Writ Petition is allowed. The impugned order dated 20.10.2015 is quashed and set aside.

12 Criminal Miscellaneous Application No.244/2015 is restored to the file of the learned Additional Sessions Judge, Aurangabad for deciding it afresh. It is expected that after issuance of notice by the learned Sessions Judge to all the Non-Applicants, the said application will be decided on its own merits.

13 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)