

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APPP) No.2191 of 2018 in
Criminal Application (APL) No.707 of 2015
(Sanjay s/o. Rambhau Harsulkar .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Amit V. Band, Advocate for the applicant.
Ms H.N.Jaipurkar, A.P.P. for respondent no.1/State.
Mr.Amol G. Hunge, Advocate h/f. Mr.O.K.Masurke,
Advocate for respondent no.2.

CORAM : P. N. DESHMUKH &
MRS.SWAPNA JOSHI, JJ.

DATE : 22.12.2018.

Heard Mr.Amit Band, learned Counsel for the applicant, Ms H.N.Jaipurkar, learned Additional Public Prosecutor for respondent no.1/State and Mr.Amol Hunge, learned Counsel holding for Mr.O.K.Masurke, learned Counsel for respondent no.2.

This application is for restoration of Criminal Application No.707 of 2015 which came to be dismissed for default on 5th December, 2018. Learned Counsel for the applicant submits that, on the date of dismissal, he could not remain present as was engaged before other Court and has admitted that, though, on that day, matter was adjourned for passing dismissal order, since none was present for applicant prior to that date, learned Counsel makes a statement at bar that his Counsel note was filed for that date. It is, therefore, prayed that application be

allowed.

Record reveals that, on 5.12.2018, matter was posted for passing dismissal order since none was present on earlier two dates nor applicant had filed on record documents for which sufficient time was granted. Even today, learned Counsel for the applicant prays for time to file documents on record in the event application is restored alleging that the documents which he intends to file go to the root of the case which would establish fact of the applicant not being in village Sawali, Tq.Manora, District Washim on the day of incident i.e. on 25.8.2015.

Having considering the facts as aforesaid, we find application to be liable to be allowed as the application can be considered on merits instead of being dismissed on mere technicality.

The application is, therefore, allowed by imposing costs of **Rs.3,000/-** upon the applicant to be paid to non-applicant no.2/Complainant. On making payment of amount of costs, application be restored on the file of this Court.

JUDGE

JUDGE

**jaiswal*