

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION 580 OF 2018

IN

WRIT PETITION NO.494 OF 2011

Raju Mahtaney & Ors. ... Applicants

Versus

The State of Maharashtra & Ors. ... Respondents

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Mr.Yashpal Jain with Mr.Ankit Pandey, Advocate for the Applicant.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent No.1/State.

Mr.Swapnil Ambure with Mr.Arjun Thomas i/b. M/s.Naik Naik & Co., Advocate for the Respondent No.3.

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CORAM : A.M.BADAR J.

DATED : 31st JANUARY 2020.

P.C. :

1 This is an application for restoration of Writ Petition
which came to be dismissed as the learned Advocate for the
petitioner was absent when the petition was called out for hearing.

2 Heard the learned Counsels appearing for parties. The learned Advocate appearing for the respondent No.3/original complainant vehemently opposed this application by contending that the Company which is an accused in the original complaint is now under liquidation and, therefore, application for restoration of the petition cannot be made by present applicants. It is further argued that initially the petition was dismissed for want of prosecution on 11/07/2011. It was restored. Now again it came to be dismissed on 12/09/2018, as nobody represented the petitioners when the petition is called out for hearing. It is further urged that application for restoration was moved when the proceedings before the learned trial Court were fixed for hearing due to vacation of the stay.

3 I have considered the submissions so advanced and perused the application. Applicants who are seeking restoration of petition are accused in the subject Criminal Case. They are seeking restoration of the petition qua themselves. Hence, liquidation of the Company has no relevance so far as the instant application is concerned.

4 As the petition was admitted after hearing both parties, absence of the petitioners on 12th September 2018 cannot be given overbearing importance for throwing the meritorious case out of the Court. Primarily, it is the function of the Court to adjudicate the dispute on its own merits rather than adhering to technicality of law. Therefore, for the reasons stated in the application and particularly because due to absence of the Advocate the petition was dismissed, the applicants should not suffer. Therefore, I am inclined to allow this application. However, considering the fact that this is a dismissal on second occasion, the applicant to pay the cost to safeguard the interest of the original complainant. Hence, the Order :

ORDER

- (i) The application is allowed in terms of prayer clause (c) by condoning the delay qua the present applicants only, subject to payment of cost quantified at Rs.30,000/- payable by the applicants to the respondent No.3.
- (ii) Needless to mention that restoration of the petition revives all previous Orders passed in the petition.

(iii) The cost be paid within a period of two weeks from today.

(iv) Hearing of the petition is expedited.

(v) The Application is accordingly disposed of.

(A.M.BADAR, J.)

**Raju D.
Gaikwad**

Digitally signed by
Raju D. Gaikwad
Date: 2020.02.03
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