

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

946 CRIMINAL APPLICATION NO.2383 OF 2020
IN
CRIMINAL APPLICATION NO.1404 OF 2020

DASHRATH NARAYAN TANDALE
VERSUS
SHRIDHAR KESHAVACHARYA PATWARDHAN AND OTHERS

...
Advocate for Applicants : Mr. V.D. Salunke
...

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 15/01/2021 & 19/01/2021.

ORDER : 19/01/2021 For corrected order.

ORDER : [PER T.V. NALAWADE, J.]

1. Present proceeding is filed for recalling the judgment and order dated 4.12.2020 passed by this Court in Criminal Application No. 1404/2020. Request is made to restore the matter for hearing of both the sides and for fresh decision.

2. As the present proceeding was filed for virtually review of the previous decision, though on peculiar ground, this Court did not issue notice to other side and by order dated 11.1.2021 after hearing the learned counsel for applicant for some time, this Court passed the following order :-

“Mr. Salunke, learned counsel for the applicant is expected to argue the main matter on merit. This Court expressed that the office committed mistake by not showing his name on the Board and this Court

acted on the basis of office note, which was apparently wrong.

2. Stand over to 15-01-2021. Mr. Salunke, learned counsel is expected to point out his grievance against office during his argument in the matter on merits.”

Thus, the matter was kept for giving hearing to the learned counsel for applicant as mentioned above. This Court wanted to give opportunity to counsel of present applicant who is informant in C.R.No. 251/2020 registered with Parli City Police Station, District Beed for the offences punishable under sections 420, 406 and 34 of Indian Penal Code. As such order was passed and on 15.1.2021, the advocate for informant was expected to show to the Court that due to the mistake of staff of the Court, he did not remain present and there are some grounds in the main matter and for recalling decision and so, the proceeding filed against informant for quashing of F.I.R. needs to be reheard. On 15.1.2021 instead of arguing the matter, the advocate for the informant produced on record one communication dated 14.1.2021 allegedly made by informant Dashrath Tandale. Along with this, he produced a photocopy of photograph of one foot showing that the foot was in bandage. He submitted that his client was indoor patient and so, adjournment may be given. He did not, however, submit that he wanted to withdraw from the proceeding.

3. The learned counsel Shri. Salunke made other submissions which are quoted in the order dated 15.1.2021 and the Court had expressed that if he was not intending to argue the matter, there was no question of giving any relief to him. But, on 15.1.2021 following order came to be dictated :-

"IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 2383 OF 2020
IN
CRIMINAL APPLICATION NO. 1404 OF 2020

DASHRATH S/o Narayan Tandale	... Applicant
Versus	
Shridhar Keshavcharya Patwardhan	
and Others	.. Respondents

...

Advocate for the Applicant : Mr. V. D. Salunke
A.P.P for Respondent- State : Mr. G. O. Wattamwar

....

CORAM : T.V. NALAWADE AND
M. G. SEWLIKAR, JJ.
DATE : 15.01.2021.

PER COURT :-

. Learned counsel for the applicant Shri. V. D. Salunke, produced on record the communication of Dashrath Narayan Tandale dated 14.01.2021. It shows that his client informed him that he should not argue the matter. It appears that he has produced on record one photograph showing Bandage to his leg. Thus, photograph does not show that he is admitted in the hospital. Learned counsel Shri. V.D. Salunke today submitted that the client has undergone minor operation and he is admitted in the hospital. There is no record of such admission. There are peculiar

circumstances in the present matter which this Court will be quoting in the detail reasoned order. The learned counsel Shri. V.D. Salunke submitted that he is unable to argue the matter as there is no affidavit of his client in reply. He submitted there is one more circumstance that one application was given by the original applicant for permission to produce the documents and those documents are also not with him and so he is unable to argue. Thus, on one hand his client has asked him not to argue the matter and on the other hand learned counsel Shri. V.D. Salunke is making submissions of aforesaid nature.

2. On 11.01.2021, in view of the grievance raised by the applicant in Criminal Application No. 2383 of 2020 this Court had made order as follows :-

"Mr. Salunke, learned counsel for the applicant is expected to argue the main matter on merit. This Court expressed that the office committed mistake by not showing his name on the Board and this Court acted on the basis of office note, which was apparently wrong.

Stand over to 15.01.2021. Mr. Salunke, learned counsel is expected to point out his grievance against office during his argument in the matter on merit. "

3. This Court had expressed that Advocate Mr. Salunke can go with the presumption that the main matter is restored and that is why he is expected to argue on main matter on merits. To give him opportunity to make preparation for argument in the

matter on merit, order of aforesaid nature was made but the submissions of aforesaid nature are made. As the learned counsel Shri. V.D. Salunke is not ready to argue the matter even when Court asked and give aforesaid reason, this Court is deciding present matter on merits and reasons will be given in respect of the circumstance about which grievance is raised and also on the merits of the main matter. This Court is dismissing the main matter again on merit.

4. The application No. 2383 of 2020 filed for restoration is allowed by considering the probability that there is some substance in the contention made in the application. However, all the circumstances in respect of grievance will be mentioned in reasoned order. So, the main matter is again dismissed and the Criminal Application No. 2383 stands allowed.

5. Reasons to follow.”

4. The order dated 15.1.2021 shows that in the order not only appearance of Advocate Shri. V.D. Salunke is shown, but appearance of Shri. G.O. Wattamwar learned APP for respondent State is also shown. This is how the office commits mistake. When notice was not issued to the respondents of the Criminal Application No. 2383/2020 office ought not to have shown the appearance of counsels of other sides on docket and also on the order. It appears that the same mistake was committed when order was made on 11.1.2021 and appearance of A.P.P. Shri. A.S. Shinde is shown when

no order was made even against the State.

5. On 15.1.2021 there was exchange of words between the Court and learned counsel Shri. V.D. Salunke and it appears that due to oversight instead of dismissing the review application as it could have been dismissed due to non prosecution and when the main matter need not have been touched, the aforesaid order came to be dictated. Accordingly, the order was also typed. At the time of checking of the order, the Court realised that there was a mistake due to oversight and instead of dismissing the proceeding of the informant present applicant, the main proceeding filed for quashing of F.I.R. was ordered to be dismissed. The order dated 15.1.2021 was not signed by both the judges of this Court. During dictation of the reasons, which were to be dictated as mentioned in order dated 15.1.2021 this Court felt it necessary to correct order dictated and so to mention the order and so the aforesaid order is mentioned. In view of nature of submission made and as matter was not argued, the Court could not have dismissed the matter which was filed for quashing as it was already allowed. The words used like 'again' show that the Court due to oversight thought and in hurry that the previous matter was filed for other relief and it was initially dismissed when it was actually allowed. Such dismissal of application by changing judgment also could not have been done behind the back of original applicant of proceeding No. 1404/2020 and further, no notice was given to original applicant of review proceeding. A

modus operandi is developed and this Court has noticed that in some cases by filing such review/recalling order proceedings, matters are kept pending for many years when there are no merits in the matters. There are also circulated directions of Hon'ble Supreme Court to see that such review applications are not kept pending for longer time and that is why no notice was issued of the application filed for recalling the order. Due to oversight only, the aforesaid mistake is committed by the Court, but that order which was dictated as operative order in open Court was not signed. Thus, the correction can be made and it is the duty of Court to make the correction. Sections 353 and 482 of Cr.P.C. need to be seen in this regard.

6. This Court is correcting the aforesaid mistake as the mistake was committed due to oversight. Let us see other circumstances. Advocate Shri. V.D. Salunke did not argue at all on merits of the main matter and also on the circumstances mentioned in the Criminal Application No. 2383/2020 like mismanagement of criminal department of not mentioning his name on the record. This point needs to be addressed first. The record of Criminal Application No. 1404/2020 shows that the first order of notice was made on 18.4.2020 and on that day, order of notice was made against respondent Nos. 1, 2 and 3. The said order passed by other Court is as under :-

“Issue notice to the respondents, returnable on

18th September 2020. the learned A.P.P. waives service of notice on behalf of respondent Nos. 1, 2 and 3.”

7. The matter came before regular Court, this Court, on 19.9.2020 and following order came to be passed :-

“1. Report is awaited of service of regular process. Keep on 30th September, 2020.”

2 Pendency of these matters do not amount to interim relief of any nature.”

Thus, as per the record, the report in respect of service of regular process was shown as awaited and so, on that date matter was adjourned to 30.9.2020. On 30.9.2020 this Court passed order as under :-

“1. Issue notice to respondent No. 4 returnable after four weeks. Private notice and R.P.A.D. is allowed.

2. Hamdast allowed.

3. Detail address or new address of the concerned respondent can be given by the applicants.

4. Pendency of this matter does not amount of interim relief of any nature.”

Thus, first time on 30.9.2020 order was made against informant which was made returnable as mentioned in this order. Then the matter came up before this Court on 4.11.2020. On that day, on board, it was shown that service of notice was effected on informant. On that day, on the dockets, files of both the judges, appearance of

Shri. V.D. Salunke was not shown and on board also his name was not shown. As there was service of regular process, this Court passed order to appoint one counsel to represent respondent No. 4 and that order dated 4.11.2020 is as under :-

“Learned counsel Smt. Pratibha Bharad is appointed to represent respondent No. 4 as nobody is appearing for respondent No.4. Copies of papers are to be supplied to her. The matter will be heard on 4th December 2020.”

8. Ordinarily, this Court gives longer time even after appointing counsel as *amicus curie* to represent respondent as there is always possibility of appearance of the informant during that time. The decision dated 4.12.2020 shows that both the sides were heard and Criminal Application No. 1404/2020 which was filed for quashing was allowed. Criminal Application No. 1606/2020 was filed in the proceeding of Criminal Application No. 1404/2020 by the applicant on 16.9.2020 for permission to produce some documents and that application was also disposed of by this judgment. Copy of order passed by Sessions Court for granting anticipatory bail in favour of applicants of proceeding bearing Criminal Application No.1404/2020 was produced along with this application. It appears that the operative order was dictated on 4.12.2020 when Criminal Application No.1404/2020 was allowed and in that matter, one advocate Shri. V.T. Patil was shown as present as advocate holding for Advocate

Shri. V.D. Salunke. Advocate Smt. Pratibha Bharad was also shown as present as appointed counsel. Only Advocate Smt. Bharad argued for informant. In spite of this circumstance, Advocate Shri. Salunke submitted that nobody was present on that day for him and matter was heard behind his back. This Court has seen the office record, including of computer section. The record shows that Advocate Shri. V.D. Salunke had filed appearance on 9.10.2020. Though appearance was filed on 9.10.2020, on 4.11.2020 when the matter had come before this Court, the appearance of Shri. V.D. Salunke was not shown on board and it was not there on the docket also. Due to this circumstance, Advocate Smt. Pratibha Bharad was appointed. If he had filed appearance on 9.10.2020, he ought to have noted the due date which was 4.11.2020. But it is his contention that he would have remained present only if his name was shown on board. This submission can not be accepted and it is the duty of the advocate to note the due date and remain present before the Court on due date. Almost all advocates note the numbers of their matters and when the matter ought to have been taken on board and when it is not taken on board, they mention the matter and request the Court to take the matter on board. Court also takes such matter on board when due matter is not shown on board. Thus, the roznama order dated 4.11.2020 shows that on 4.11.2020 nobody remained present for informant even when Vakalatnama was filed on 9.10.2020. It is already mentioned that on the date of decision i.e. on 4.12.2020, the

presency of Advocate Shri. V.T. Patil was shown as advocate holding for Advocate Shri. V.D. Salunke, but he in review application insisted to allow him to argue Criminal Application No. 1404/2020. When there is advocate appointed by party and there is also advocate appointed by Court, by practice, this Court allows both the advocates to argue for that party. Advocate Shri. Patil holding for Shri. Salunke did not argue. If Shri. V.D. Salunke had not argued the matter on that day, it can be said that he had avoided to argue the matter on that day. Shri. V.T. Patil was present in the Court hall and he was holding for Shri. V.D. Salunke and accordingly, his name was written on docket and also in operative order which was dictated in open Court on 4.12.2020. The decision dated 4.12.2020 explains everything and it shows that the advocate of informant wanted to protract decision.

9. Though there are aforesaid circumstances, in present matter Criminal Application No.2383/2020 this Court on the first day expressed that Court was ready to give hearing to Shri. Salunke if his client was not happy with him and he needs to argue merits of Criminal Application No. 1404/2020. He avoided to argue the matter and he did not advance arguments even in respect of the grievance against the office which is mentioned in the petition. Then with the presumption that the Court is passing the order against the client of Shri. V.D. Salunke, aforesaid order came to be dictated on 15.1.2021. It is clear that due to oversight the main proceeding bearing Criminal

Application No. 1404/2020 is shown as dismissed, when it could not have been dismissed and there was no question of touching the decision of that matter. The word 'again' used shows that this Court wanted to keep the decision as it is. The order shows that there was no rule and rule was not made absolute. This order was dictated in open Court and when Shri. V.D. Salunke was present in the Court hall. When he was knowing that Court is committing mistake in dictating operative order, he did not even mention that the Court is committing mistake. The other side was not present and so, there was no question of pointing out the mistake by other side and other side was not noticed. These circumstances show that the days have gone when Courts used to act on the words of the advocates. Now the Courts need to be very cautious as the things have changed and circumstances like above are created. This Court is making it clear that this Court had no intention to change the decision of Criminal Application No. 1404/2020. It could not have been done on merits. To show the reasons for previous decision of application No. 1404/2020, this Court is quoting the entire decision which is as under :-

"IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 1404 OF 2020
WITH
CRIMINAL APPLICATION NO. 1606 OF 2020
IN
CRIMINAL APPLICATION NO. 1404 OF 2020**

1. Shridhar Keshavacharya Patwardhan,
Aged 78 years, Occu. Nil,
R/o. Parali Vajjnath, Dist. Beed,

Now at Flat No. 203, Purva Apartments,
Nakshatrangan, Hindustan Awas,
Paithan Road, Aurangabad.

2. Dr. Raghvendra Shridharrao Patwardhan,
Aged 35 years, Occu. Govt. Service,
R/o. At Flat No. 203, Purva Apartments,
Nakshatrangan, Hindustan Awas,
Paithan Road, Aurangabad,
Now at Flat No. 404, Kumkum Corner,
Plot No. 1B, Sector-26, Navi Mumbai.

3. Jaishree Shridhar Patwardhan,
Aged 73 years, Occu. Nil,
R/o. Parali Vaijnath, Dist. Beed,
Now at Flat No. 203, Purva Apartments,
Nakshatrangan, Hindustan Awas,
Paithan Road, Aurangabad.
Tq. Kaij, Dist. Beed

.. **APPLICANTS**
(Original Accused)

VERSUS

1. The State of Maharashtra,
Through the Superintendent of Police,
Beed, District Beed.
2. The Sub-Divisional Police Officer,
Sub-Division Ambajogai,
District Beed.
3. The Police Inspector,
Parali City Police Station,
Tq. Parali Vaijnath,
Dist. Beed.
4. Dashrath S/o. Narayan Tandale,
Aged Major, Occu. Business,
R/o. Saradgaon, Tq. Parali -
Vaijnath, Dist. Beed, now at
Padmavati Galli, Parali Vaijnath,
District Beed.

.. **RESPONDENTS**

...
Mr. B. G. Sagade, Advocate for Applicants
Mr. A. V. Deshmukh, APP for Respondents No. 1 to 3 - State.
Mr. V. T. Patil, Adv. h/f. Mr. V. D. Salunke, Advocate for Respondent
No.4
Mrs. Pratibha Bharad, Advocate for Respondent No.4 (*Appointed*).
...

CORAM : **T. V. NALAWADE AND**
M.G. SEWLIKAR, JJ.
DATE : **4th DECEMBER, 2020**

ORAL JUDGMENT : (PER : T.V. NALAWADE, J.)

Rule. Rule made returnable forthwith. By consent heard learned counsels for both the sides for final disposal.

2. First proceeding is filed for relief of quashing First Information Report (FIR) bearing Crime No. 251 of 2020 registered with Parali City Police Station, District Beed, for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code (IPC). Second proceeding is filed by same applicants for relief like permission to produce some documents for consideration in the main matter and that document is copy of order made in Anticipatory Bail Application passed by learned Additional Sessions Judge, Ambajogai.

3. The crime is registered on the basis of report given by respondent No. 4 Dashrath Narayan Tandale. He has made allegation against the present applicants that after making agreement of sale of land Survey No.499/2 situated at Parli-Vaijnath and accepting earnest money of Rupees One Lakh, the applicants did not execute sale deed in his favour and they sold the land to third party on 06-01-2019. It is contended that the agreement was made in his favour on 03-07-2014 and the agreed consideration was Rupees Forty Lakh.

4. The submissions made and record show that when first report was given to Police, some inquiry was made by Parali City Police Station and it was informed to the complainant that the dispute of the informant with the applicants is of civil nature, so it was not possible to register the crime. It was also informed that the disputed agreement was executed six years prior to the date of report and when applicants No.2 and 3 namely Mr. Raghvendra Shridhar Patwardhan and Sau Jayshree Shridhar Patwardhan had no concern with the agreement, unnecessarily

allegations were also made against them. The disputed agreement was made with applicant No.1 - Shridhar. It appears that even when such communication was made by concerned Police Station, the Sub-Divisional Police Officer, Ambajogai directed the Police of Parali City Police Station to register the crime for the offences punishable under Sections 420 and 406 of IPC on 13-08-2020 and then this crime came to be registered.

5. The submissions made and record further show that applicant No.1 Shridhar gave complaint to Parali City Police Station on 07-07-2020 that he was deceived by present complainant and by deceiving him his signatures were obtained on stamp paper. It is the contention that no amount was given to him and there was no consideration for this document. It is the contention that none of his relative was present when document was prepared and by misusing the circumstances that he is old person and he has some ailment, such document was prepared by the complainant.

6. When there is agreement of sale, no propriety interest is created by agreement in favour of promisee. The circumstance that the agreement was made in the year 2014 and till the year 2020 no steps were taken shows that the complainant was not serious for enforcement of agreement. The sale deed was made in favour of third party on 06-01-2019. This Court has carefully gone through the contents of agreement and allegations made by both the sides against each others. Even if, the allegations of applicant No. 1-Shridhar are ignored, it can be said that no steps were taken by the present complainant to enforce his right if he had some right under aforesaid disputed agreement. If it is presumed that applicant No.1 Shridhar committed breach of contract, that circumstance cannot be used against his relatives, applicants No. 2 and 3, and criminal action cannot be taken even against applicant No.1 Shridhar. At the first instance concerned Police Station had considered these circumstances and it was

informed to the complainant that it is civil dispute. It is surprising that Sub-Divisional Police Officer subsequently directed the Police of Parali City Police Station to register the crime, when there were aforesaid circumstances. In view of the position of law if the police are allowed to investigate the matter and take coercive action against applicants, it will be abuse of process of law.

7. In the present matter, initially as nobody had appeared for the informant, one Advocate Smt. Pratibha Bharad was appointed to represent him. Then, Mr. V. D. Salunke, learned counsel caused his appearance on behalf of respondent No. 4-informant. The matter was kept for hearing today. When the matter was taken up for hearing, learned counsel Mr. V. T. Patil, who was holding for Mr. Salunke, did not make any submission and when Court expressed view, he submitted that Mr. V. D. Salunke, learned counsel is not available. Thus, after hearing learned counsel for the applicant, when this Court expressed that it is apparent misuse of process of law, Advocate Mr. Patil, started asking for adjournment and wanted to protract the decision. Earlier Advocate, who was appointed for representing respondent No. 4-informant was available, so opportunity was given to her for making submissions. In the result, following order.

ORDER

- I. The Application is allowed. Relief is granted in terms of prayer clause (B).
- II. Criminal Application No. 1606/2020 stands disposed of.
- III. Rule made absolute in those terms.
- IV. Fees of the learned appointed counsel is quantified as Rs. 4000/- (Rupees Four Thousand only) and it is to be paid through the High Court Legal Services, Sub-

Committee, Aurangabad.”

10. When there is such decision, allowing proceeding filed for quashing of F.I.R., the application filed for review/recalling the decision can be allowed only in exceptional circumstances like there is error apparent and the decision is given without considering relevant material. There was no such circumstance. So, it was necessary to argue Criminal Application No.2383/2020 to make out prima facie case for that purpose, for admission. No such argument was advanced. The communication of informant dated 15.1.2021 shows that he had requested Shri. Salunke to see that matter bearing Criminal Application No. 1404/2020 is restored only. The informant had written that for arguing Criminal Application No. 1404/2020 he wanted to appoint other advocate. In view of nature of proceeding No.2383/2020 such splitting of the matter was not possible as application like Criminal Application No. 2383/2020 can be dismissed if there are no merits in the application. This circumstance shows that motive behind it was ulterior and they were tactics to protract the decision on the application.

11. This Court wanted to avoid the protracting the matter and only with that purpose, aforesaid order came to be passed. The decision of Criminal Application No. 1404/2020 shows that the civil remedy was apparently time barred and only to get something by

using police machinery report was given to police. Due to all these circumstances, heavy costs can be imposed in Criminal Application No. 2383/2020, but considering possibility that informant is misguided, this Court is not imposing costs.

12. In view of these circumstances and section 362 of Cr.P.C. this Court holds that the application filed for review needs to be dismissed and so, it is dismissed. Correction is to be made on the record of computer as it is uploaded by staff that Criminal Application No. 2383/2020 is allowed and Criminal Application No.1404/2020 is shown as dismissed. It is made clear that there is no change in the decision given of Criminal Application No. 1404/2020 on 4.12.2020.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

It appears that Advocate Shri. V.D. Salunke did not remain present even when the matter was listed on the board and it was called at about 10.35 a.m. Today first time the office showed to this Court the affidavit filed by Advocate Shri. Salunke dated 14.1.2021, the day on which the order which is corrected was dictated. The contentions are the same and they are already considered in the corrected order.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/