

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

CRIMINAL APPLICATION (APPR) NOS.65/2021 AND 14/2021 IN
CRIMINAL REVISION NO.94/2008
Shri Balaji s/o Dhondu Solanke and ors

..VS..

The State of Mah., thr. PS Washim, District Washim

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

Court's or Judge's Order

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Shri A.M.Ghare, Counsel for Applicants.
Shri K.L.Dharmadhikari, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE J.
DATED : JANUARY 28, 2021.

1. Heard learned counsel Shri A.M.Ghare for applicants and learned Additional Public Prosecutor Shri K.L.Dharmadhikari for the State.
2. Applicants approached to this Court in the year 2008 challenging judgment and order of conviction passed by learned Judge below which was confirmed by Lower Appellate Court. On 16.6.2008, revision was admitted. On 22.2.2011 counsel for applicants did not remain present before the Court when the revision was called out for final hearing and, therefore, this Court (Coram : A.B.Chaudhari, J.) dismissed the revision in default. Criminal Application No.14/2021 is for recall of order dismissing the revision in default. Since there is a delay in moving the said application, Criminal Application No.65/2021 was filed for condonation of delay.

3. After having gone through the contents of the application, I am satisfied in respect of the explanation of delay.
4. In this view of the matter, delay is condoned.
5. Insofar as application for recalling of order is concerned, for a fault on the part of Advocate litigants should not suffer. On the said principle, application of recalling of order dated 22.2.2011 is allowed. Criminal Revision No.94/2008 is restored to file.
6. Both applications are allowed and disposed of accordingly.

Criminal Application (APPR) No.13/2021

1. Heard learned counsel Shri A.M.Ghare for applicants and learned Additional Public Prosecutor Shri K.L.Dharmadhikari for the State.
2. Initially, applicants were convicted by judgment and order of conviction dated 30.8.2005 passed by learned 3rd Ad hoc Assistant Sessions Judge, Washim for offences punishable under Sections 326 and 324 of the Indian Penal Code and they were convicted for different duration of sentences. Felt aggrieved by the said, they approached to Lower Appellate Court by filing Criminal Appeal No.33/2005 and learned Additional Sessions Judge at Washim on 3.5.2008 dismissed the appeal and maintained the order of conviction.
3. Thereafter, applicants approached to this Court by filing a Criminal Revision No.94/2008 and on 16.6.2008

the revision filed on behalf of applicants came to be admitted. Along with the revision, applicants filed Criminal Application No.1865/2008 for suspension of substantive jail sentence and for grant of bail. The said application was considered favourably on 16.6.2008. The substantive jail sentence imposed upon applicants was suspended and applicants were released on bail on they executing P.R.Bond in the sum of Rs.15,000/- with one solvent surety of the like amount. They were also directed to give their attendance once in a month to Washim Police Station during the pendency of the revision.

4. Be that as it may, when the revision came up for its final hearing on 22.2.2011, learned counsel for the applicants failed to attend this Court and, therefore, this Court (Coram : A.B.Chaudhari, J.) on 22.2.2011 dismissed the revision. Obviously, after dismissal of the revision, interim order of bail ceased to exist.

5. Thereafter, applicants filed an application for recalling of order dated 22.2.2011. Today, after having gone through contents of the application, this Court allowed the application filed on behalf of applicants and recalled order dated 22.2.2011. Resultantly, revision is restored to its file.

6. Applicants were on bail throughout during the trial as well as during the pendency of the appeal. The applicants were also released on bail by this Court in the year 2008. The revision was dismissed for want of appearance of learned counsel for applicants.

7. This application came up before me for

consideration on 19.1.2021. On the said day, this Court directed applicants first to surrender to the law. Accordingly, applicants surrendered before Washim Police Station on 21.1.2021.

8. Learned Additional Public Prosecutor Shri K.L.Dharmadhikari for the State, filed a Pursis stamp No.1/2021 along with general diary details of Washim Police Station showing therein that applicants surrendered before police authorities and, thereafter, steps were taken to lodge them in prison. Thus, from 21.1.2021 applicants are in jail.

9. Since applicants were granted bail and only for the fault on the part of Advocate for applicants their bail ceased to exist, in my view, the application needs to be allowed. Consequently, I pass following order:

ORDER

(1) The criminal application is allowed.

(2) The substantive jail sentence imposed upon applicants by judgment and order of conviction dated 30.8.2005 passed by learned 3rd Ad hoc Assistant Sessions Judge, Washim in S.T.No.66/2004 shall remain suspended during the pendency of this revision and upheld by judgment and order dated 3.5.2008 passed by learned Additional Sessions Judge, Washim in Criminal Appeal No.33/2005.

(3) Applicants shall be released on bail on they executing P.R.Bond in the sum of Rs.15000/- with one solvent surety

of the like amount.

(4) The Bail Bonds shall be executed before learned Additional Sessions Judge, Washim.

(5) Applicants are directed to give their attendance once in a month to Washim Police Station (Rural) and they shall maintain diary showing their attendance.

(6) Applicant are directed to remain personally present before this Court at the time of final hearing of the revision.

(7) Record and proceedings of S.T.No.66/2004 and Criminal Appeal No.33/2005 be called for.

With this, the criminal application stands disposed of accordingly.

CRIMINAL REVISION NO.94/2008

1. Heard.
2. Applicant No.3 Dhondu s/o Ganpat Solanke, passed away on 21.1.2013. A photocopy of death certificate is filed on record along with Criminal Application No.14/2021.
3. In view of the death certificate and when the said fact is not disputed, the revision of applicant No.3 stands abated.

JUDGE

!! BRW !!

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