

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

CRIMINAL APPLICATION (APPP) NO. 224/2021
IN
CRIMINAL APPLICATION (APL) NO. 841/2020

Harish R. Chamedia
..VS..
State & anr.

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

Court's or Judge's orders

Shri N. Lalwani, Advocate for the applicant
Shri N.S. Rao, APP for the non-applicant no. 1

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
FEBRUARY 9, 2021

Criminal Application (APL) No. 841/2020 filed by the applicant under Section 482 of the Code of Criminal Procedure was listed on 21/12/2020 on which date none appeared for the applicant and the matter was adjourned for second week of January, 2021. Then the matter was listed on 14/01/2021, on which date again none appeared for the applicant in the morning session as well as in the afternoon session and the matter was adjourned. The matter was listed on 18/01/2021 on which date none appeared for the applicant in the morning session. Learned APP had requested for keeping the matter back assuring that he would make a phone call to Shri H. Belekar, Advocate, whose name appeared on the record. The matter was kept back. It is only after message was given by learned APP, Shri H. Belekar, Advocate appeared in the afternoon session and made statement that the file was with Shri N. Lalwani, Advocate

and he requested for adjournment. Looking to the absence on earlier occasions, we refused to adjourn the matter. Accordingly, the criminal application was dismissed for want of prosecution.

Now, this application is filed praying that the order passed on 18/01/2021 be recalled and the Criminal Application (APL) No. 841/2020 be restored and considered on merits. In the present application, the explanation for absence of the advocate when the matter was listed is given in para nos. 3, 4, 5, 6 and 7 as follows:-

“3. It is submitted that the counsel for the applicant Nitin Lalwani, Advocate was entrusted the matter by the applicant and it was to be drafted and argued by him. However, due to his personal difficulties he was in need of some assistance. Advocate Harshal Belekar had offered his assistance in the matter. Accordingly, with the assistance of Advocate Harshal Belekar, the matter of drafted and filed with joint vakalatnama by Advocate Nitin Lalwani and Advocate Harshal Belekar, in the month of October, 2020.

*3. That, unfortunately when the matter name of Advocate Nitin Lalwani was not appearing, although his vakalatnama was there in the matter. This fact was not within the knowledge of Advocate Nitin Lalwani as well as Advocate Harshal Belekar. The matter was listed before this Honourable Court on 21.12.2020 before this Honourable Court. However, as name of Advocate Nitin Lalwani did not appear in the cause list it was not marked. At this juncture it is necessary to point out that, this matter was tried to be circulated for 22.12.2020, for which e-mail was sent to the registry, on 18.12.2020, as per the prevailing SOP. Annexed herewith and marked as **ANNEXURE – B** is the copy of said e-mail dated 18.12.2020.*

4. That, the matter was not listed on 22.12.2020 when the cause list was checked. The counsel for the applicant was under bonafide impression that the matter was not listed and the circulation might not have been granted. The counsel was totally unaware that it was listed on 21.12.2020 and name of Advocate Nitin Lalwani was not appearing.

5. That, the matter again came up on 14.01.2021 before this Honourable Court. Again it could not be marked for the same reason i.e. name of Advocate Nitin Lalwani did not appear. The matter was again listed on 18.01.2021, but even on this occasion for the same reason the matter was not marked. It was only when Advocate Harshal Belekar, on 18.01.2021, received a call from the Learned APP appearing in the matter, it was noticed that matter is listed before this Honourable Court and it was called out in morning session. When none appeared for applicant in the morning session it was kept in the afternoon. Upon coming to know the same Advocate Harshal Belekar had appeared and had prayed for time, as Advocate Nitin Lalwani was in Amravati on that day.

6. That, the Honourable Court was pleased to give an opportunity to Advocate Harshal Belekar to argue the matter when it was called out. However, since Advocate Harshal Belekar did not have the file and Advocate Nitin Lalwani was not in town request was made to adjourn the matter. The Honourable Court was pleased to reject the said request and the matter was dismissed for want of prosecution.

7. It is submitted that the reason for non appearance in the matter was that the matter was been searched by the name of Advocate Nitin Lalwani. It is pertinent to mention here that this Honourable Court while dismissing the application for want of prosecution had observed that it was the duty of Advocate Harshal Belekar to inform Advocate Nitin Lalwani about listing of the matter. But, unfortunately, Advocate Harshal Belekar was also not aware about listing of the matter. It is submitted that Advocate

Harshal Belekar being a junior does not have any independent matter in High Court, therefore, he had not searched the cause list in his own name. In such circumstances, the matter could not be marked and consequently the counsel representing the applicant could not appear before this Honourable Court when the matter was listed.”

The casualness in attending the matters is on the rise and we have observed that it is taken to be granted that if the matter is not attended, the Court would adjourn the matter. Though we are conscious that such technical and strict approach should not be adopted, in the facts of the present case, we are not inclined to show any indulgence.

Hence, the criminal application is **dismissed**.

JUDGE

JUDGE