

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

MISC. CRIMINAL APPLICATION (APPP) NO.577 OF 2019

IN

CRIMINAL PUBLIC INTEREST LITIGATION NO.4 OF 2017 (D)

Pradipkumar Popatlal Vakharia.

Vs.

State of Maharashtra through its Principal Secretary, Ministry of Law and Judiciary
Department, Mantralaya, Mumbai and anr.

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

Court's or Judge's orders

Mis. Jayshree P. Junghare, Advocate h/f Mohtesim Badar, Advocate
for applicant.

Shri N. R. Patil, APP for respondent no.1.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 23/02/2021

1. Heard learned counsel for the applicant and
learned APP for respondent no.1. Nobody is present for
respondent no.2.

2. Learned counsel for the applicant submits
that the counsel for the applicant, on 13.03.2019, was
busy in another matter before another Bench and
therefore, he could not remain present before this Court.
However, this submission does not find its mention
anywhere in the application. In the application, it is
stated that the counsel for the petitioner was present in

Court on 13.03.2019 up to 4.15 p.m. and therefore, he went to attend the call of nature and after returning and attending Court, it was revealed to him that during the intervening period, this matter was called out and in spite of the fact that the matter was kept for reply of the State as well as Advocate General, this Court went ahead to dismiss the Criminal P. I. L. for want of prosecution.

3. The explanation on the face of it is false. One explanation is stated in the application and another explanation is now submitted before the Court. Then, the applicant Advocate has conveniently avoided to mention the time at which he returned to the Court on 13.03.2019. If he really had gone out to answer the nature's call at 4.15 p.m., time of 15 minutes at least was available before arrival of the closing hour of the Court, which was then 4.30 p.m. It is not known as to whether or not the learned counsel had returned to the Court before 4.30 p.m. or at 4.30 p.m. However, it could be presumed that the learned counsel had returned to the Court before 4.30 p.m. as the learned counsel has himself admitted that after his return, he had attended

the Court. This statement is found in paragraph No.2. That means, there was time and opportunity available to the learned counsel to immediately mention before the Court about his presence in the Court and he could have also made a request to the Court for recalling the order that was passed during the time between 4.15 p.m. and 4.30 p.m. Even on the next date, such opportunity was available to the learned counsel but, he did not avail of it and did not avail of it even in about three to four days next.

4. Then, today the explanation that has been orally submitted by the learned counsel is entirely different. Today the learned counsel is submitting that on that day he was busy attending some other matter in another Court. If this explanation is to be considered, we would say that it does not provide any sufficient cause to this Court for recalling the order dated 13.03.2019. It is well settled law that an Advocate being busy in another Court is no excuse, although, in exceptional cases, such excuse can be accepted, if a case for sufficient cause is made out. Such a case of sufficient cause perhaps could

have been there, if the learned Advocate on finishing the matter in another Court had returned to this Court the same day or the next working day and pleaded for recall of the order. But, in this case it is not so and, therefore, merely saying that the learned counsel was busy in another Court would not answer the requirement of law regarding establishing of sufficient cause. In any case, such an explanation, not specifically stated in the delay condonation application is contrary to the stand taken by the learned counsel in the application and is, therefore, of doubtful nature.

5. Now, if we peruse the order dated 13.03.2019 one can at once see that the dismissal was not without giving of sufficient opportunity to the learned counsel. The order specifically mentions that on 10.01.2019 and also on 27.02.2019, the earlier dates, nobody was present for the petitioner. No explanation whatsoever has been given by the learned counsel for the applicant about his absence before this Court on these previous dates.

6. The facts and circumstances noted above, would only show that the applicant is not really interested in prosecuting the matter and by making such an application, just desires to keep the issue burning without any purpose. There is no merit in the application. The application is rejected.

7. However, we make it clear that rejection of this application will not preclude any challenge which has been raised in the petition, from being raised once again, provided there is a cause of action shown to be arising for making such a challenge by an aggrieved person.

JUDGE

JUDGE