

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

CRIMINAL APPLICATION (APPA) NO.47 OF 2020

Shri Sanjay Khatanmal Jeswani

Versus

Vinod S/o Ramaji Darunde

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

Court's or Judge's Order

Shri S.D. Zoting, Advocate for the applicant.

Shri Shankar Borkute, Advocate for the non-applicant.

CORAM : ANIL S. KILOR, J.

DATED : 28/02/2022

1. This is an application for recalling of order dated 24.10.2018, passed in Criminal Appeal No.661.2018.

2. This Court on 24.10.2018, allowed the appeal with cost of Rs.40,000/- to be paid by the respondent/accused to the appellant/complainant within two months.

3. The learned counsel for the respondent points out that he was not served in the appeal. He fairly states that the notice which was served upon the respondent was on the application for condonation of delay in filing appeal. It is submitted that twice the application for condonation of delay was dismissed for want of prosecution. However, on both occasions notices were not issued and the application for condonation of delay was restored. Thereafter, this Court allowed the application for condonation of delay on 27.08.2018 and had observed that a fresh notice to the

respondent is not required, however, Advocate for the appellant shall send copy of this order to the respondent by speed post acknowledgment due and file affidavit of compliance on record till 06.09.2018.

4. Whereupon the learned counsel for the appellant filed affidavit of service along with postal receipt and report of the Postal Department having endorsement that the respondent has received the item.

5. The learned counsel for the respondent submits that there is no acknowledgment filed by the appellant having signature of the respondent.

6. He therefore, submits that the appeal was decided behind the back of the respondent by considering that the respondent was served. He therefore, prays for recalling of order dated 24.10.2018.

7. On the other hand, Shri Zoting, learned counsel for the appellant submits that the affidavit was filed on record showing that the respondent was served and the Postal Department report as regard service of notice is sufficient to hold that the respondent was served. He therefore, submits that in spite of service, he did not appear and accordingly, this Court vide judgment dated 24.10.2018, allowed the appeal.

8. I have perused the record and from the record, it is revealed that twice the application for condonation of delay was dismissed for want of prosecution. However, on both the occasions, the application was restored, without issuing notice to the respondent.

9. Even, on condoning the delay vide order dated 27.08.2018, there is no order to issue notice on appeal. Though the affidavit of the appellant is on record, to show that notice was served to the respondent by Post. However, looking to the nature of the dispute involved in the present matter and as this is a criminal matter, I am of the opinion that service through Court was also necessary. In absence of any service made on the respondent through Court after registration of appeal on condonation of delay, I am of the opinion that the request of the applicant is justifiable in seeking recall of order dated 24.10.2018.

10. For the reasons stated above, the application is **allowed**. The order dated 24.10.2018, is recalled.

Criminal Appeal No.661 of 2018

Heard.

ADMIT.

Call record and Proceedings.

Office is directed to place this matter for final hearing on **24.03.2022.**

C.L.Dhakate

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LOPCHAND
DHAKATE

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[ANIL S. KILOR, J.]