



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**17 CRIMINAL APPLICATION NO. 2461 OF 2025**  
**IN APPLN/737/2022**

1. Jaishree w/o Vishnu Kalsait  
Age 32 years, Occu. Nil,  
R/o Rudraniwas, Ashram Road  
Near Lathi Hospital, Uralikanchan Pune.
2. Daivashala w/o Dayaram Sarode  
Age 30 years, Occu. Nil,  
R/o Patoda, Tq. Ambejogai, District Beed.
3. Lata w/o Rameshwar Dhote  
Age 52 years, Occu. Nil,  
R/o behind Hotel New Garden  
Dr. Shamprasad Nagar, Kasargaon Latur  
District Latur.
4. Rameshwar a/o Gopalrao Dhote  
Age 57 years, Occu. Service,  
R/o Milkat No.1419, Naygaon Road,  
Raman Bag, Sontapawadi Pune.
5. Rohan s/o Rameshwar Dhote  
Age 34 years, Occu. Private Service,  
R/o Milkat N. 1419, Naygaon Road,  
Raman Bag, Sontapawadi Pune.

**... Applicants**  
(Ori. Accused)

**Versus**

1. The State of Maharashtra,  
Through Police Inspector Nanded,  
Rural Police Station Nanded,  
Tq. And Dist. Nanded.
2. Sunanda w/o Rohan Dhote  
Age 30 years, Occu. Nil  
R/o Jaibhavani Colony,  
Near Budhavihar, Hadco  
New Nanded, Nanded.

**... Respondents**  
(No.2 Ori. Complainant)

...

Mr. Amit Tandulkar, h/f Mr. Gajanan G. Kadam, Advocates for Applicants.  
Smt. R. P. Gour, APP for Respondent / State.

...

CORAM : **SMT. VIBHA KANKANWADI &  
SANJAY A. DESHMUKH, JJ.**

DATE : 21<sup>st</sup> July, 2025.

**Per Court:**

. Present application has been filed for restoration of Criminal Application No.737 of 2022. By order dated 23<sup>rd</sup> June, 2025, an adjournment was sought on behalf of the applicants on the ground that the concerned Advocate on the record has gone to attend the trial before another Court. This Court had considered the conditional order, which was passed on 31<sup>st</sup> October, 2023, when the spare copy for serving respondent No.2 was not given. This Court had directed the applicants to supply the spare copy within two weeks and thereafter, the notice to be issued, but it was also the stipulation that if the copy is not given within the stipulated time, then the matter would stand dismissed automatically without further reference to the Court. The copies were not supplied and the conditional order became operational. The application stood dismissed as against respondent No.2 on 31<sup>st</sup> October, 2023. But then again when the matter was on board on 8<sup>th</sup> March, 2024 and 5<sup>th</sup> April, 2024, it appears that the learned counsel for the applicants had sought time to provide spare

copy. That request was in ignorance of the automatic dismissal of the application and no application was filed till 23<sup>rd</sup> June, 2025 for recall of the order dated 31<sup>st</sup> October, 2023 and therefore, this Court dismissed the application as the FIR or the proceedings cannot be quashed and set aside without hearing the informant. Now, the present application has been filed for quashing and setting aside the order dated 23<sup>rd</sup> June, 2025, and also for recall of order dated 31<sup>st</sup> October, 2023.

2            Heard Advocate Mr. Amit Tandulkar, holding for Mr. G. G. Kadam, learned counsel for the applicants.

3            The learned counsel for the applicants submits that though the opportunity was given by this Court, the earlier advocate has not abided by the same and had not supplied the copy. The applicants are not at fault and they would suffer if the order is not recalled.

4            The learned APP strongly opposes the application and submits that there cannot be consequential defaults.

5            Since in the main matter also respondent No.2 / original informant was not served, there is no necessity to issue notice in respect of the present application.

6            Here important to be noted is that when the applicants want to recall the order dated 31<sup>st</sup> October, 2023, then there should have been an application for condonation of delay. The question of setting aside the order dated 23<sup>rd</sup> June, 2025, is not in question at all as by the order dated 23<sup>rd</sup> June, 2025, this Court reiterated or confirmed the fact of application that was dismissed as against respondent No.2 on 31<sup>st</sup> October, 2023. In the entire application, there is no specific reason as to why from 31<sup>st</sup> October, 2023 till 23<sup>rd</sup> June, 2025, no application was filed for recall of the order dated 31<sup>st</sup> October, 2023. General statements are made that there is no willful default on the part of the applicants. Wrong statement has been made that the applicants were pursuing the matter diligently, when there is, in fact, a delay in seeking recall of the order dated 31<sup>st</sup> October, 2023.

7            It is also stated in the application that the right to seek quashing of the FIR and the criminal proceedings under Section 482 of Cr.P.C. is the valuable legal remedy available to the accused. If that was so valuable, as considered by the applicants, then they ought to have been diligent enough. We cannot say that the dismissal or order that was passed by this Court on 23<sup>rd</sup> June, 2025, was on the basis of technical default. In fact, we upheld the right of the informant to be heard in a matter seeking quashment of the FIR and the criminal proceedings. Only the accused cannot canvas that they have the right.

8           Equal duty was on the shoulders of the applicants to see what is the progress in their matter, not only before this Court but also before the Trial Court. Nowadays, the orders are available on the website. Applicant No.4, father-in-law, appears to be in civil service, though other applicants appear to be the housewives. Certainly, the responsibility was more on applicant No.4 to get the latest information regarding the status of the proceedings from the advocate and they ought to have been in contact with their advocate continuously. We deprecate the practice of condemning another advocate by an advocate, who is now representing the party, behind the back of the advocate stated to be on the instructions of his client, against whom allegations are made, because there is a clear statement in paragraph No.6 that it was the negligence of the previous advocate. It cannot be considered that it is easy to get rid of the responsibility by making a submission that the previous advocate erred.

9           The fact that remains is that the earlier application came to be dismissed as there was no compliance. Now, the applicants are ready to supply the copy and therefore, case is made out for restoration by recalling the earlier orders. However, taking into consideration the time gap, certainly case is made out for imposing of costs on the applicants. With these observations, we proceed to pass

the following order:-

**ORDER**

- I. The application stands allowed.
- II. The order dated 23<sup>rd</sup> June, 2025 and the order dated 31<sup>st</sup> October, 2023, stand recalled, subject to deposit of costs of Rs.5000/- (Rupees Five Thousand Only) by the applicants to the High Court Legal Services Authority, Aurangabad, within a period of one week.
- III. After the amount is deposited and the copy of the application with annexures thereto are supplied to the office of this Court for serving respondent No.2, within a week thereafter, the original Criminal Application No.737 of 2022, would stand restored.
- IV. Needless to say that if these conditions are not fulfilled, then the order dated 23<sup>rd</sup> June, 2025, would stand revived.

**[ SANJAY A. DESHMUKH, J. ]      [ SMT. VIBHA KANKANWADI, J. ]**

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