

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO.3605 OF 2024****IN****CRIMINAL WRIT PETITION NO.2982 OF 2015**

Anshu Variinder Khanna

.....Applicant

**In the Matter Between:**

Anshu Variinder Khanna

.....Petitioner

Vs.

The State Of Maharashtra &amp; Ors.

.....Respondents

Mr. Ghanshyam Mishra with Ms. Ekta Bhalerao & Ms. Ekta Mistry, for the Applicant.

Mr. Swapnil V. Walve, APP, for Respondent Nos.1& 2-State.

Mr. IshanJani with Mr. Vishnodatta Mishra, for the Respondent Nos.4 to 7.

Ms. Ruchita Dhuru, Advocate present.

**CORAM : A. S. GADKARI AND  
DR. NEELA GOKHALE, JJ.**

**DATE : 15<sup>th</sup> JANUARY, 2025.**

**PC.:- (Per Dr. Neela Gokhale, J.)**

1) The Applicant seeks recall of Judgment and Order dated 18<sup>th</sup> July 2024 passed by this Court in Criminal Writ Petition No.2982 of 2015.

2) The Original Writ Petition was filed by the Respondent Nos. 3 to 7 herein seeking quashing of FIR No. 3 of 2013 dated 1<sup>st</sup> March 2013 registered with RCF Police Station for offences punishable under Sections 498-A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860

(‘IPC’) and the charge-sheet dated 14<sup>th</sup> May 2013 filed before the Metropolitan Magistrate, 52<sup>nd</sup> Court at Kurla, Mumbai culminating from the said FIR.

3) By order dated 27<sup>th</sup> January 2016, the Petition was admitted and the proceedings before the trial Court were stayed during the pendency of the Petition. Mediation attempts were made, but failed. Thereafter, the Petition appeared on the list of matters for final hearing. By judgment and order dated 18<sup>th</sup> July 2024, the Petition was finally heard and decided on merits. The Applicant seeks recall of this Judgment and Order.

4) We have heard Mr. Ghanshyam Mishra, learned counsel for the Applicant and Mr. Ishan Jani, learned counsel for the Respondents No. 4 to 7 and with their assistance perused record. Ms. Ruchita Dhuru, Advocate is present in the Court today.

5) Mr. Mishra submits that, the Applicant was not aware of the listing of the case and hence, she could not remain present personally and that the Respondents failed to serve amended copy of the Petition to the Applicant. He submits that the Applicant is prejudiced by the order and the same is violation of the principles of natural justice. He thus, submits that the judgment and order impugned herein be recalled.

6) Mr. Jani submits that Section 362 of the Code of Criminal Procedure, provides bar on the Court from altering or reviewing its judgment or final order disposing of a case except to correct a clerical or

arithmetical error. He also points out that there was a counsel representing the Applicant on earlier occasions in the Petition and merely because the Applicant failed to remain present for the hearing, the judgment and order cannot be recalled. He thus, prayed for dismissal of the application.

7) The Order dated 27th January 2016 clearly shows the appearance of one Advocate Ms. Rachita Dhuru i/b Mr. Prakash Wagh, Advocate as representing the Applicant herein. The Petition was admitted by the order dated 27<sup>th</sup> January 2016 and submissions of the counsel appearing for the Applicant are recorded in the Order. It is thus, clear that the Applicant herein had engaged a counsel to appear in the matter and represent her. Ms. Rachita Dhuru, Advocate is present in the Court today but she says that the Applicant never gave her vakalatnama and had appeared on instructions of Advocate Mr. Wagh. Mr. Mishra however, submits that Advocate Prakash Wagh was engaged by the Applicant.

8) The record in the original Petition, i.e., report of the Registry dated 22<sup>nd</sup> June 2023 indicates that Rule Notice was issued to Respondent No.3 and was received back duly served. The Petition then appeared on the weekly cause-list of matters for final hearing.

9) Record thus shows that the Applicant herein was very much represented in the proceedings but failed to appear herself or through her Advocate on the date on which the Petition was finally heard. Now she seeks recall of the order on the ground that opportunity of hearing was not

given to her.

10) Admittedly, Section 362 of the Cr.P.C. provides that, save and except to correct a clerical or arithmetical error, a Court cannot review or alter its judgment or final order disposing a case. Mr. Mishra seeks to draw a distinction between ‘recall’ and ‘review’ of an order and relies upon a decision of the Supreme Court in Criminal Appeal No. 1323 of 2004 decided on 23<sup>rd</sup> February 2011 in the matter of *Vishnu Agarwal v. State of UP & Anr.* We have perused the said order. The facts therein are clearly distinct from the present matter inasmuch as the case in that matter did not appear in the cause-list of that Court and the said decision is of no help to the Applicant.

11) Undoubtedly, in the aforesaid decision, the Apex Court has also distinguished between a Review Petition and a Recall Petition and the latter is when the Court may recall an order if passed without giving opportunity of hearing to an affected party. However, in the facts of the present matter, the Applicant was represented by a counsel on previous dates and notice of the Writ Petition being admitted was duly served on her. It is for the Applicant to keep abreast of the status of her proceedings. In fact, when a counsel instructed by Advocate on record appears before the Court, the Court accepts the representation by the counsel as a representation of a litigant. It is for the litigant (Applicant in the present matter) to ensure that a proper and duly signed vakalatnama is filed by her Advocate on record.

The Court cannot be expected to issue successive notices to the parties if the party chooses not to appear before the Court, especially once the Registry reports that notice has been duly served upon the party.

12) The Supreme Court in paragraph 10 of its recent decision in the matter of *Rajneesh Kumar & Anr. v. Ved Prakash*<sup>1</sup> held as under:

*“10. ....We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”*

13) Even this Court in its order dated 17<sup>th</sup> June 2019 in Writ Petition No.4227 of 2016 in the case of *Yashwant Bapu Bhosale v. Smt. Rakhmabai Bajirao Hapse* has held that, litigants/clients cannot be heard to raise a spacious plea that they have entrusted the brief to their advocates and he will do the needful for them even without being given instructions to him from time to time. It is also the responsibility of the litigants to

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pursue their own matter with his advocate. This Court then reiterated its observation in *Yashwant Babu Bhosale (Supra)* in its decision dated 17<sup>th</sup> August 2021 passed in an IA in Second Appeal (St) No. 4725 of 2021.

14) Furthermore, the Judgment and Order sought to be recalled is passed after examining the merits in the matter and is not merely an *ex-parte* order. Paragraph 13 of the impugned Judgment and Order clearly records, the FIR to be a proxy litigation by the Applicant's husband through her to settle his own property disputes with his family members, by abusing the salutary and welfare provision of Section 498-A of the IPC. It is also recorded that FIR is filed with ulterior motive for wreaking personal vengeance on the Respondents No.3 to 7 herein. We had quashed the FIR and the charge-sheet after giving our anxious consideration to the facts of the case and had concluded the same to be a complete abuse of process of law. Thus, the Judgment and Order impugned herein was passed after consideration of the merits in detail and was not merely an *ex-parte* order.

15) In view of the aforesaid discussion, we find no merit in the present Application. The Application is accordingly dismissed.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)