

IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 6th OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 43706 of 2023

BETWEEN:-

NARENDRA UPADHYAY S/O LATE SHRI AJMER
SINGH, AGED 64 YEARS, CASTE BRAHMIN
OCCUPATION: RETIRED GOVT SERVANT R/O
ADARSH COLONY GUNA PS CANTT GUNA
DISTRICT GUNA (MADHYA PRADESH)

.....APPLICANT

(BY MS. SMRATI SHARMA- ADVOCATE)

AND

1. NARENDRA SINGH S/O PHOOL SINGH, AGED
34 YEARS, R/O TORIYA PS CANTT GUNA
DISTRICT GUNA (MADHYA PRADESH)
2. DIST. MAGISTRATE GUNA (MADHYA
PRADESH)
3. SUPERINTENDENT OF POLICE DISTRICT
GUNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SIRAJ QURESHI- GOVERNMENT ADVOCATE FOR
RESPONDENT/STATE)

.....
*This application coming on for admission this day, the court
passed the following:*

ORDER

1. The present petition under Section 482 of the Cr.P.C. has been
preferred by the petitioner seeking restoration of MCRC No.9925/2013

which got dismissed on 22.02.2023 in non-appearance of petitioner or his counsel.

2. Learned counsel for the petitioner submits that the when MCRC was listed on 22.02.2023 and it was called for hearing then at that time counsel for petitioner was engaged in other court work, therefore, the said MCRC was dismissed in non-appearance of the counsel. He further submits that the said mistake was *bonafide*, therefore, this M.Cr.C. deserves to be allowed. which is duly supported by an affidavit.

3. The reasons assigned by learned counsel for the petitioner appear to be genuine and *bonafide*. Looking to the nature of cause and *bonafide* intents as well as settled law that for the fault of the counsel, the litigant should not be made to suffer (see: **AIR 2001 SC 2497, M.K. Prasad Vs. P. Arumugam, 2007 (5) MPHT 470, Dindayal Bansal Vs. Gwalior Nagar Tatha Gram Vikas Pradhikara n**), the present petition deserves to be and is hereby **allowed** subject to payment of cost of Rs.1000/-.

4. A suggestion has been given to counsel for the applicant to invest one hour of community service while visiting Mercy Home behind Collectorate building Datia Road (Gwalior) with some food items/snacks and spend one hour with the children/ inmates/ families, who are of humble background and are being taken care of by the NGO/Society sponsored by State Government. This community service of one hour would not only be satisfying to the soul but would also give a message to the differently abled children that society and its members care for them and that they are not considered as the children of the Lesser God.

5. The said suggestion is not punitive in nature and compliance of it is at the discretion of counsel for the applicant.

6. Graceful enough in her disposition, suggestion is readily accepted by counsel for the applicant and she undertakes not only to visit the aforesaid place but to carry sufficient food items and spend one hour time with them to understand them and to satisfy herself while doing such a pious work.

7. Appreciating the gesture shown by counsel for the applicant with the earnest hope and belief that she would visit the aforesaid place within 15 days from today and spend one hour time with the children/ inmates/ families bring smile on their face and satisfy her soul. It is expected that any Government Advocate or other lady advocate may also accompany the counsel for this purpose. Even otherwise, some other advocate may also accompany her.

8. Therefore, keeping the said spirit, counsel for the applicant is directed to submit a report regarding her visit to the Mercy Home within fifteen days elaborating her experience and status of mercy home with suggestions, if any in the litigation (MCRC No.9925/2013), which is going to be restored by this order.

9. On submission of the report and affidavit as accepted by counsel for the applicant, the MCRC shall be restored to file.

10. Accordingly, instant petition for restoration is **allowed** subject to the direction as referred above and MCRC No.9925/2013 is restored to its original file.

11. Copy of this order be kept in the file of MCRC No.9925/2013 for record/compliance purpose.

12. With the aforesaid, the petition stands **disposed** of.

(ANAND PATHAK)
JUDGE

Vishal

