

HIGH COURT OF MADHYA PRADESH:
MAIN SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K. SETH
AND HON. SMT. ANJULI PALO, JJ)

Misc. Criminal Case No.16302/2017

Applicants : Smt. Saroj Rajak & another
V E R S U S
Respondent : State of M.P.

Shri Raghuvansh Kumar Choubey,
Advocate for the applicants.

Shri Naveen Dubey, Government
Advocate for the respondent/State.

O R D E R
(09.10.2017)

Per Seth, J.

Applicants have filed this petition for restoration of M.Cr.C. No.15037/2017, which was dismissed for want of prosecution on 18.9.2017.

2. The ground urged is that the Counsel for applicants could not mark the case in the Cause List dated 18.9.2017, therefore, he could not appear when the case was called out. It is further contended that for the mistake of a counsel, party should not suffer. Learned counsel submitted that he had very good

case on merit as the local police could not have registered and investigated the criminal case against applicants and in support of this contention, reliance is placed on a Division Bench decision delivered in M.Cr.C. No.9915 of 2015 (Ravindra Kumar Dubey Vs. State of M.P.) decided on July 08, 2016.

3. After careful consideration of the submissions, we find them of no merit and substance.

4. So far as the cause of non-appearance on 18.9.2017, it may be stated to be an afterthought. We had sent for the original record of M.Cr.C. No.15037 of 2017. Perusal of *Vakalatnama* filed therein reveals that applicants had engaged Shri R.K. Choubey, Adv. and Shri M.K.Choubey, Adv. as their counsel in M.Cr.C. No. 15037 of 2017. Computer generated cause-list shows that the case was fixed on 18.9.2017. Intimation to this effect was sent to the Counsel well in advance through SMS on the mobile phone on 15.9.2017.

5. In this view of the matter, it is no longer open for the counsel to urge that he missed the case in daily cause list. It is not a case of *bofafide*

mistake but a deliberate and conscious attempt to hood wink the Court and process of administration of justice. In view of above discussion, the principle that the party should not suffer for the mistake of counsel is not applicable to the facts of the present case. In our considered opinion, if the applicants have suffered because of the lapse of their counsel, then they are free to take recourse to the remedy legally available to them but they cannot claim, as a matter of right, that their petition u/s. 482 Cr.P.C. registered as M.Cr.C. No. 15037 of 2017 must be restored for rehearing. Hence, we reject this contention.

6. Now, coming to the next contention that applicants have good case on merit in view of the Division Bench decision given in M.Cr.C. No.9915 of 2015, suffice it to say that the said decision has been set aside by the Supreme Court by order dated 03/05/2017 in SLP (Crl.) No.6437 of 2016 (District Central Co-operative Bank Vs. Ravindra Kumar Dubey and anohter), which reads as under:-

"1. Heard the learned counsel for the parties.

2. Leave granted.

3. In our opinion, the High Court misadventured in quashing the proceedings in the manner in which the order has been passed. The High Court should have been little more careful while quashing the proceedings. Be that as it may, as agreed to, the impugned order is set aside.

4. The respondents to raise the question about the competency of the officer to investigate the matter before the Trial Court as and when the occasion arises, during the course of the trial.

5. Accordingly, the impugned judgment and order is set aside and the appeal is allowed."

7. In view of the decision of the Supreme Court, reliance placed on Division Bench decision of this Court is of no avail.

8. In view of the foregoing discussion, we find no merit and substance in this petition. Petition, therefore, stands **dismissed**.

9. Ordered accordingly.

(S.K. SETH)
J U D G E

(SMT. ANJULI PALO)
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