

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

**CRIMINAL APPLICATION NO. 4046 OF 2013
IN APPLN/4045/2013 WITH APPLN/4045/2013**

THE STATE OF MAHARASHTRA

..APPLICANT.

VERSUS

RUKMINBAI PIRAJI ANDHARE.

..RESPONDENT.

...
APP for Applicant/State : Mr.S.D. Kaldate.
Advocate for Respondents : Mr.Deshmukh Rajiv B.
...

CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: 5th February, 2015.

PER COURT :-

This is an application for condonation of delay caused in filing the appeal challenging acquittal of the respondent of the offences punishable under Section 302 and 323 of IPC by the trial Court.

2. Heard learned Counsel appearing for the parties, perused the affidavit placed on record along with documents.

3. According to the learned APP, delay has been caused because of following routine official formalities by the State and its instrumentalities.

4. Per contra, according to the learned Counsel for respondent, delay is attributable to the negligence of the clerk in the office of the Additional Public Prosecutor, Udgir and negligence cannot be a *bona fide* cause for condoning delay.

5. Our attention was drawn to a letter dated 30th July, 2013 issued by the Assistant Government Pleader & Addl. Public Prosecutor, Udgir to the Public Prosecutor, High Court, Bench at Aurangabad. It is stated therein that as the clerk provided to that office was new and therefore, he could not prepare appeal. On this aspect, we directed the applicant State to file affidavit of the learned Joint Secretary, Law & Judiciary Department as we formed an opinion that, by this letter, it was tried to inform that appeals are being drafted by the concerned clerk. We perused the affidavit of learned Joint Secretary, Law & Judiciary Department as well as Jayashree w/o Gangadhar

Patil, who was then working as APP at Udgir. It is explained that the said letter was not happily worded and what was to be stated, was that as the concerned clerk was new, he could not collect the documents and certified copies required for drafting appeal proposal.

6. It is seen from the duly sworn in testimony of the learned Joint Secretary, Law & Judiciary Department as well as the then APP that certified copies of documents required for drafting appeal proposal were ready on 22.5.2012. Because of over burden, the then Additional government Pleader could not draft appeal proposal expeditiously. However, after drafting the same, it was sent to the office of the Joint Secretary, Law & Judiciary Department on 26.6.2013, from where, after due scrutiny and approval, the proposal was transmitted to the office of the Public Prosecutor, High Court Court on 19.7.2013. It was received by the said office on 22.7.2013 and the concerned APP, after drafting appeal, has presented the same on 7th August, 2013. Thus, the dates reflected from the affidavits of the responsible officers, does not require us to infer that the delay was not *bona fide* but intentional to

cause harassment to non applicant. Moreover, no affidavit-in-reply has been filed by the non applicant to controvert the averments made in the affidavits sworn in by the learned Joint Secretary, Law & Judiciary Department as well as the then APP.

7. Hence, we conclude that the delay occasioned in lodging the appeal is *bona fide* and same is condoned. Criminal Application No.4046 of 2013 is allowed accordingly and stands disposed of.

Put up Criminal Application No.4045 of 2013 on 12.2.2015.

(**A.M. BADAR, J.)**

(**S.S. SHINDE, J.)**