

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 175 OF 2015**

Dr. Mohd. Mustufa Haji Md. Momin
Hindustanwala .. Applicant
v/s.
Shah Mohammed Mohd. Saeed & Anr. ..Respondents

Mr. Gajendra Jadhav for the applicant
Aisha Mohamed Zubair Ansari for respondent no.1
Mr. J.H. Ramugade, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 28th AUGUST, 2015.**

P.C.

1. Heard.
2. By this application, the applicant has sought to condone the delay of 1 year and 128 days in filing the application for leave to appeal.
3. The records reveal that the impugned judgment was passed in September, 2013. The applicant had challenged the said judgment by filing an Appeal in Sessions Court at Malegaon, Dist. Nashik. The said appeal was filed in October, 2014 and was

withdrawn in December, 2015 as the appeal was not maintainable before the Sessions Court. Having withdrawn the appeal, the applicant has filed the application for leave.

4. It is thus, evident that the applicant had filed the appeal before a wrong forum based on a wrong advise. This itself constitutes sufficient cause. Furthermore, the applicant has pursued the appeal bonafidely and with due diligence before the Sessions Court from October, 2014 till December, 2015. The time spent in pursuing the matter in a wrong forum also needs to be excluded under the provisions of Section 14 of the Limitation Act.

5. Under the circumstances, the Application is allowed in terms of prayer clause (a). The delay of 1 year and 128 days in filing the application for leave to appeal is condoned.

6. The application for leave to appeal be registered.

(ANUJA PRABHUDESSAI, J.)