

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.912 OF 2014
IN
CRIMINAL APPEAL (ST.) NO.590 OF 2014**

RIYAZ AHMAD WAZIR AHMAD HASHMI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Shri Vijay Hiremath, Advocate for the Applicant.

Shri D.P.Adsule, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 30th OCTOBER 2015.

P.C. :

1 This is an application for condonation of delay in filing an appeal against the order of acquittal. The appeal is being filed by virtue of the proviso to Section 372 of the Code of Criminal Procedure (Code). The applicant / appellant claims to be a victim of the alleged offences.

2 The order of acquittal was passed on a trial held by Assistant Sessions Judge.

3 The proviso to Section 372 of the Code, inter alia, provides that the appeals filed thereunder shall lie to the court, to which an appeal ordinarily lies against an order of conviction of such court.

4 Section 374 of the Code shows that a person convicted on a trial held by an Assistant Sessions Judge, can appeal to the court of Sessions itself, unless the sentence of imprisonment that has been imposed upon the convict, is for a period of more than 7 years. Thus, there are two forums to which the appeals from the orders of conviction passed by an Assistant Sessions Judge would lie. If the sentence passed by the Assistant Sessions Judge would be not more than imprisonment for a period of 7 years, then the appeal would lie to the court of Sessions, and if the sentence of imprisonment would be more than 7 years, it would lie to the High court.

5 The proviso to Section 372 of the Code uses the word “ordinarily.” The appeals from the convictions from a trial held by an Assistant Sessions Judge would '*ordinarily*' lie to the court of Sessions, and it is only when the sentence imposed by him would be of imprisonment for a period of more than 7 years, the appeal would lie to this court.

6 Thus, in my opinion, the present appeal should be filed before the court of Sessions itself. Obviously, therefore, the application for condonation of delay also should be dealt with by the court of Sessions.

7 It would be proper, in the circumstances, to direct the appeal memo and the application for condonation of delay to be returned to the applicant / appellant for filing it before the court of Sessions, after making appropriate amendments.

8 Needless to say, that while considering the question of condonation of delay, the court of Sessions shall take into consideration the period during which the application was pending before this court. There cannot be any doubt that the applicant had been following the matter in this court bonafide.

9 Registry to do the needful.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment / Order.**