

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

CRIMINAL WRIT PETITION (wp) NO. 301 OF 2015

Rajesh s/o Parashram Bodkhe & ors.

v.

State of Maharashtra & anr.

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Courts's or Judge's orders

**Coram : B.P .Dharmadhikari and
V.M.Deshpande, JJ.**

Date : 01st DECEMBER, 2015

Heard Advocate Deshpande for the
petitioners/original accused, Advocate Kalwaghe for respondent
no.2/victim and Shri Thakare, learned APP for the State.

Order passed by Additional Sessions Judge, Washim,
on 09.9.2014 directing Criminal Appeal No. 25/14 to be registered
and tried has been questioned before this Court.

Advocate Deshpande submits that Section 378 of
Code of Criminal Procedure expressly points out scope of such
appeal to be preferred by complainant. He relies upon provisions
of Article 115 of Limitation Act to urge that said provision expressly
stipulates period of 30 days for preferring such appeal. Here, the

appeal has been filed beyond the said period and without preferring any application for condonation of delay. This aspect is totally lost sight of by the Additional Sessions Judge while ordering registration thereof and hence the order dated 9.9.2014 is without jurisdiction.

Without prejudice to this submission, he has also invited attention to proviso of Section 372 of Code of Criminal Procedure to point out the contingencies in which right to prefer an appeal to victim is provided. The Hon'ble Apex Court in **Satya Pal Singh vs. State of M.P. & ors.** reported in **2015(10) SCALE 444** has expressly observed that the said proviso cannot be construed to travel beyond the scope of parent provision and, therefore, such victim must obtain leave before filing appeal. According to him, these observations are even applicable in the present case. He has, by way of abundant precaution, invited our attention to provisions of Article 114 of Limitation Act to urge that it also prescribes limitation of 30 days.

Advocate Kalwaghe and learned APP submit that the proviso of Section 372 Cr.P.C. may not be relevant here as period of limitation is necessary when leave of Court is to be obtained under Section 378 Cr.P.C. while preferring appeal before High Court. As such leave is not required here, there is no question of limitation. They submit that the learned Additional Sessions Judge has correctly exercised jurisdiction and the order dated 09.9.2014 does not call for interference.

Shri Kalwaghe, without prejudice to his submission

that appeal has been filed within a reasonable time, invites attention to the pleadings in appeal-memo from paragraph 5 onwards to show that filing of appeal within reasonable time has been demonstrated. He argues that those facts could have been looked into by the Additional Sessions Judge for the purpose of finding out whether appeal has been preferred within reasonable time or not. He also submits that even said facts can be looked into by this Court and the question can be answered.

The rival arguments show that the question whether appeal as filed is regulated by Article 115 or Article 114 of Limitation Act. Advocate Kalwaghe in fact sought time to advance his contention that “conviction for lesser offence” in the proviso to Section 372 may also include a lesser punishment. According to Mr.Deshpande, aspect of lesser punishment or inadequate punishment is governed only by Section 377 Cr.PC. We do not wish to go into said controversy, as basically the issue of limitation needs to be answered by the Court which has passed impugned order and answer to that issue will depend upon answers to the rival arguments being advanced.

That jurisdiction has to be exercised by Additional Sessions Judge at first stage. The aspect of limitation has not been pointed out to that Court. After that Court takes a particular view in the matter, that view can be challenged before appropriate forum. We find that there is no separate application for condonation of delay. While pointing out that appeal has been preferred within reasonable time and, therefore, it should be registered, the appeal-memo itself contains some reasons therefor.

As the issue of limitation was never raised before the Additional Sessions Judge, that Court has not touched the said aspect.

In this situation, we grant respondent no. 2 leave to file additional affidavit in support of his submission that appeal has been preferred within reasonable time, or in the alternative, that there are just and sufficient grounds to condone the delay. After such application is filed and it is replied to by the present petitioners, learned Additional Sessions Judge shall independently consider the controversy in accordance with law and reach suitable decision. Needless to mention that fact or mere registration of appeal shall not weigh with that Court while evaluating the rival arguments.

We direct the petitioners and respondent no. 2 to appear before that Court on 11.1.2016 and to abide by its further instructions in the matter.

With these directions and keeping all the contentions open, we partly allow the writ petition. No costs.

JUDGE

JUDGE