

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2640 OF 2016
IN AND WITH
CRIMINAL APPEAL ST. NO.317 OF 2016

Suresh Indrachand Jain,
Age-59 years, Occu:Business,
R/o-Prepratik Building,
Ambajogai Road, Latur, Dist-Latur.

...APPLICANT
(Orig. Complainant)

VERSUS

- 1) Shamsundar s/o Jamunadas Gilda,
Age-55 years, Occu:Business,
R/o-Papvinash Road, Latur,
Tq. & Dist-Latur,
- 2) Mahesh Shamsundar Gilda,
Age-27 years, Occu:Business,
R/o-Papvinash Road, Latur,
Tq. & Dist-Latur,
- 3) Dnyanoba Goroba Kale,
Age-45 years, Occu:Private Service,
R/o-Panchincholi, Latur,
Tq. & Dist-Latur,
- 4) The State of Maharashtra,
Through Police Inspector,
Police Station Gandhi Chowk,
Latur, Tq. & Dist-Latur.

...RESPONDENTS
(Resp. Nos.1 to 3 - Orig. Accused)

...
Mr.V.D. Gunale, A.P.P. for Applicant/Appellant.
Mr.K.S. Hoke Patil, A.P.P. for Respondent No.4.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 6TH JUNE, 2016

ORDER :

1. Heard Advocate Shri Gunale for the Appellant - original complainant. This delay condonation Application No.2640 of 2016 has been filed along with Criminal Appeal St. No.317 of 2016, which has been tendered under Section 378(4) of the Code of Criminal Procedure, 1973 (Cr.P.C.).

2. I am not entering into the merits of the delay condonation application, as I find that the Appeal itself is not maintainable. It has been tendered under Section 378(4) of Cr.P.C. by the original complainant. Section 378(4) applies to complaint cases. The impugned order is in a matter which is a State case. Now, the learned counsel for the Appellant agrees that Section 378(4) of

Cr.P.C. would not apply and that the relevant provision is Proviso of Section 372 of Cr.P.C.

3. Had there been conviction in the Summary Criminal Case No.852 of 2012, the Appeal would lie to the Sessions Court and as such if there has been acquittal, the victim has remedy under Proviso of Section 372 of Cr.P.C. This being so, the application for delay condonation and the Appeal tendered is not maintainable.

4. The learned counsel for the Appellant - original complainant, at this stage, states that he may be permitted to withdraw the delay condonation application as well as the Appeal tendered, with liberty to move the concerned Sessions Court.

5. The Application for delay condonation and the Appeal tendered, are disposed as withdrawn, with liberty to approach the concerned Sessions

Court. The Application for delay condonation and Appeal, appears to have been tendered in this Court on 6th May 2016. The period spent from 6th May 2016 till today may be favourably considered by the Sessions Court while calculating the delay and reasons for condoning the delay.

[A.I.S.CHEEMA, J.]

asb/JUN16