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

CRIMINAL WRIT PETITION NO. 849 OF 2016

Suhas Vishnudas Shah,
Age: 70 years, Occu: Business & Agri.,
R/o. Main Road, Niazampur,
Tq. Sakri, Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra
2. Bharat Vishnudas Shah,
Age: 73 years, Occu: Chartered Accountant,
R/o. 725, Raviwar Peth,
Opposite Tamboli Masjid,
Laxmi Road, Pune,
Tq. & Dist. Pune
3. Vinodchandra Aniruddha Shah,
Age: 74 years, Occu: Business & Agri.,
R/o. Main Road, Niazampur,
Tq. Sakri, Dist. Dhule

..RESPONDENTS

Mr V. B. Patil, Advocate for petitioner;
Mr N. T. Bhagat, Addl. Public Prosecutor for respondent No.1;
Mr P. P. Mandlik, Advocate for respondent No. 2;
Mr N. N. Desale, Advocate for respondent No. 3

CORAM : N.W. SAMBRE, J.

DATE : 27th September, 2016

ORAL ORDER :

Learned Judicial Magistrate First Class, Sakri, in Regular Criminal Case No.4 of 2006 (State vs. Suhas & anr.), acquitted the petitioner-accused of offences punishable under sections 420, 468 read with section 34 of the Indian Penal Code, vide judgment and order dated 1st December, 2012.

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2. Respondent no.2 – complainant, preferred Criminal Misc. Application No.10 of 2014, seeking condonation of delay caused in preferring an appeal against acquittal, which came to be allowed by learned Additional Sessions Judge, Dhule vide order dated 7th May, 2016. As such, present writ petition.

3. Learned Counsel appearing on behalf of the petitioner submits that apart from recording findings on the aspect of maintainability of the appeal at the behest of the complainant, there are hardly any considerations or reasons reflected in the order impugned. He would then urge that in the absence of any reasons in support of grant of prayer for condonation of delay, the impugned order vitiates.

4. Per contra, Mr Mandlik, learned Counsel appearing on behalf of respondent no.2, while inviting my attention to the observations made in paragraph 6 of the order impugned, submits that the learned Additional Sessions Judge has applied his mind to the cause as was cited for condonation of delay and once he has passed discretionary order, this court should be slow in interfering in its extraordinary jurisdiction.

5. Having bestowed my thoughts to the submissions made, it is required to be noted that perusal of the order of the learned Additional Sessions Judge reflects that, what weighed before the learned Additional Sessions Judge is the issue as regards maintainability of appeal at the behest of the complainant against an order of acquittal passed by the

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Magistrate. The main issue i.e. whether the complainant had made out a case for grant of prayer for condonation of delay in preferring the appeal is not at all supported by any reasons in the order impugned. Though the learned Counsel Mr Mandlik tried to rely upon paragraph 6, for the purpose of making out a ground to that effect, still what is noted from reading of said paragraph is that those are the only submissions and not the reasons.

6. Although discretion to condone delay lies with the Court, yet such discretion is required to be exercised judiciously and not in arbitrary manner.

7. In view thereof, petition succeeds. I, therefore, pass following order :-

The order dated 7th May, 2016, passed by learned Additional Sessions Judge, Dhule, in Criminal Misc. Application No.10 of 2014, is hereby quashed and set aside.

Criminal Misc. Application No.10 of 2014 stands restored to the file of learned Additional Sessions Judge, Dhule, who shall decide the same afresh, after recording reasons either way.

Parties agree that they shall appear before the learned Additional Sessions Judge, Dhule on 7th October, 2016.

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Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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