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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1783 OF 2015

Aruna Nitin Yashwantrao and Ors.

...Petitioners

Versus

Rakshak Industrial Security Agency Private
Limited and Anr.

...Respondents

Mr.Osman Chishty, for the Petitioners.

None for the Respondent No.1.

Mr.V.V.Gangurde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.

DATE : 15th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the petitioners and the learned A.P.P.
2. By this petition, the Petitioners have impugned the Order dated 23rd March, 2015, passed by the learned District Judge – 3 and Additional Sessions Judge, Thane, below Exhibit – 'G' in Criminal Miscellaneous Application No.34 of 2015, by which his application for condonation of delay in filing the Revision Application against the order

issuing process came to be rejected.

3. Learned Counsel for the petitioners state that there was a delay of 25 days in filing the Revision Application against the order of issue process, after evidence before charge was led. He submitted that the petitioners had shown sufficient cause for condoning the delay of 25 days. According to him, as one of the petitioners was unwell and hospitalized, the Revision Application could not be filed in time. According to him, considering the peculiar facts and circumstances of this case, the learned Sessions Judge ought to have condoned the delay of 25 days, which is neither deliberate nor intentional, and ought to have heard the Revision Application on merits.

4. Despite the fact, that the respondent no.1 was served and the Advocate has put in his appearance on behalf of respondent no.1, none appears for respondent no.1.

5. Perused the papers. There is a checkered history to the case. The respondent no.1 (original complainant) had filed a private complaint

being R.C.C.No.422 of 2006 in the Court of the learned 2nd Joint Judicial Magistrate First Class, Vashi, Navi Mumbai, as against the petitioners alleging offences punishable under Sections 408, 420 r/w 34 of the Indian Penal Code. The learned Magistrate was pleased to issue process as against the petitioners vide order dated 5th May, 2008. The petitioners herein, challenged the order of issue process before the learned Assistant Sessions Judge, Thane and the learned Assistant Sessions Judge, vide order dated 13th October, 2008, was pleased to quash and set aside the order issuing process. Being aggrieved by the order of the learned Assistant Sessions Judge quashing and setting aside the order issuing process, the respondent no.1 (original complainant) filed a writ petition in this Court, being Writ Petition No.53 of 2009 and this Court by a detailed order dated 22nd June, 2012 was pleased to dismiss the said petition preferred by the respondent no.1. The respondent no.1 thereafter preferred an SLP in the Apex Court and the Apex Court was pleased to pass the following order:-

ORDER

“After hearing learned counsel for the petitioner and perusing the records, we find no ground to entertain this special leave petition which is, accordingly, dismissed.

However, the Magistrate will independently consider the complaint on its merits.”

6. Thereafter, the respondent no.1 led evidence before charge before the learned Magistrate, after which the learned Magistrate was again pleased to issue process against the petitioners for the alleged offences punishable under Sections 408, 420 r/w 34 of the Indian Penal Code on 24th September, 2014. Being aggrieved by the said order issuing process, the petitioners herein, preferred a Revision Application before the learned Sessions Court, Thane, alongwith a delay condonation application. The delay in filing the Revision Application was of 25 days. The learned Sessions Judge, Thane vide order dated 23rd March, 2015 rejected the application for condonation of delay against which the aforesaid petition has been filed. It appears that the learned Sessions Judge was under an impression that the earlier Revision Application filed by the petitioners was rejected and the same was confirmed by this Court and thereafter by the Apex Court and accordingly observed as under:-

“3.....Said order was challenged before Hon'ble High Court. Even Hon'ble High Court rejected the same. Therefore, matter went

up to Hon'ble Apex Court which was partly allowed directing re-appreciation of evidence and to proceed according to law. Thereafter, Ld. lower court has accepted the evidence of complainant and has issued process. Now, again above order is challenged by filing revision even when there is no case in favour of the applicants”....

7. The petitioners have annexed the medical documents to the said petition, showing that one of the petitioners was admitted in the Hospital sometime in November, 2014 and thereafter from 30th January to 4th February, 2015. It appears that the delay is neither deliberate nor intentional. In the facts, the petitioners have shown sufficient cause to condone the delay of 25 days.

8. Considering the aforesaid, the impugned Order dated 23rd March, 2015, passed by the learned District Judge – 3 and Additional Sessions Judge, Thane, below Exhibit – 'G' in Criminal Miscellaneous Application No.34 of 2015, rejecting the delay condonation application filed by the petitioners in the Revision Application, is quashed and set aside. Delay of 25 days in filing the Revision Application is condoned. The learned Sessions Judge to hear the Revision Application filed by the

petitioners on its own merits.

9. The petition is allowed and disposed of in above terms. All contentions of both the parties are kept open.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.