

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1052 OF 2014
IN
CRIMINAL APPEAL NO.1268 OF 2011**

SHRI RADHESHYAM BESWAL)...APPLICANT

V/s.

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

Shri Girish Togani, Advocate for the Applicant.

Shri Sagar Joshi, Advocate for Respondent No.2.

Smt.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 11th FEBRUARY 2016.

P.C. :

1 Heard.

I have gone through the application and the averments therein.

2 It is seen that leave to file appeal was granted by an order dated 2nd September 2011. However, no order admitting the appeal was passed at that time. According to the applicant, since leave was granted, he was under an impression that the appeal was also admitted by this court and would be listed for 'Final Hearing.' Since, however, the appeal was not actually admitted, it was listed on 14th December 2011 before this court, when the Learned Single Judge of this court dismissed the same for want of prosecution. It is evident from the order dismissing the appeal that the merits of the matter were not at all taken into consideration.

3 The learned counsel for the respondent no.2 submits that the reasons given by the applicant while seeking condonation of delay are not sound, and therefore, the delay ought not to be condoned. Though the averments made in the application are not happily worded, I find that the appeal came to be dismissed for want of prosecution and without considering the merits of the matter, though leave to file appeal had been granted.

4 Under these circumstances, what the applicant states
viz., that he '*bona fide believed the appeal to have been admitted*' is
quite possible.

5 Considering all the relevant aspects of the matter, I am
inclined to condone the delay. This, however, should be done,
subject to the payment of costs by the applicant to respondent
no.2.

6 Delay condoned.

7 The order dated 14th December 2011 is recalled.

8 The appeal is restored to file. The same be placed on
board 'For Admission' on 3rd March 2016.

9 The applicant shall pay costs of Rs.5,000/- to
respondent no.2 before that date.

10 The application is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J.)