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

**CRIMINAL APPLICATION NO.705 OF 2015
(For Condonation of Delay)**

**IN
CRIMINAL APPLICATION NO..... OF 2015**

Shrikrishna Narayan Soman

...Applicant

Versus

Himanshu Sheshrao Namle and Anr.

...Respondents

Mr.Chetan Akerkar, for the Applicant.

Mr.Manish Bohra, i/b A.S.Khan and Associates, for the Respondent No.1.

Ms.R.V.Newton, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 27th JULY, 2016

P.C. :

1. Heard learned Counsel for the applicant and learned APP.
2. By this application, the Applicant seeks condonation of delay of 483 days in filing the aforesaid application seeking leave to file an appeal.

3. Learned Counsel for the applicant submitted that the delay in filing an application seeking leave to file appeal, is neither intentional nor deliberate, but is occasioned by the fact, that the applicant was pursuing a wrong remedy in the Sessions Court by filing a Criminal Revision Application against the impugned order dated 28th April, 2014, passed by the 44th Metropolitan Magistrate Court, Andheri, Mumbai in C.C.No.2061/SS/2007. He submitted that therefore it cannot be said that the applicant was not diligent in pursuing the case.

4. Learned Counsel for the respondent no.1 opposed the delay condonation application.

5. Perused the papers. By the impugned order dated 28th April, 2014, passed by the 44th Metropolitan Magistrate Court, Andheri, Mumbai in C.C.No.2061/SS/2007, the applicant's complaint came to be dismissed and the respondent no.1 – accused came to be acquitted. Admittedly, against the said order, the applicant filed a Revision Application before the Sessions Court which was allowed in favour of the applicant (original complainant) and the order dated 28th April, 2014 was quashed and set

aside and the complaint was restored back to its original file. Since the impugned order was passed by the learned Metropolitan Magistrate, under Section 256 of Cr.PC, the remedy was to file a leave application in this Court and not a Revision Application in the Sessions Court. Today, by a separate order passed in the Revision Application, I have quashed and set aside the Judgment and Order dated 7th February, 2015, passed by the learned Special Judge for CBI, City Civil and Sessions Court, Greater Mumbai in Criminal Revision Application No.901 of 2014, by which the Sessions Court was pleased to set aside the order dated 28th April, 2014, on the ground that the Revision was not maintainable. The delay occasioned in filing the Criminal Application, seeking leave to file appeal is neither deliberate nor intentional but purely circumstantial only because the applicant was pursuing a wrong remedy.

6. Considering the peculiar facts of the case, the application is allowed and delay of 483 days is condoned. Application is accordingly disposed of as such.

7. Registry to take steps to number Criminal Application for leave to file Appeal. Criminal Application for leave to file Appeal be listed on the 'Supplementary Board' on 2nd August, 2016.

8. Learned Counsel for the respondent no.1 states that he will continue to appear on behalf of the respondent no.1, in the Criminal Application for leave to file Appeal.

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

REVATI MOHITE DERE, J.