

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

**CRIMINAL APPLICATION NO.1259 OF 2014
IN
CRIMINAL APPEAL ST. NO.139 OF 2014**

Deepak Ramdas Johare

.. Applicant

Versus

The State of Maharashtra
and others

.. Respondents

Mr.K.C. Sant, Advocate for the applicant
Mr.K.S. Hoke Patil, APP for respondent No.1/State
Mr.Rajesh H. Mewara, Advocate for respondent Nos. 2 to 6

CORAM : V.L.ACHLIYA, J.

DATED : 29.03.2017

P.C. :-

. The applicant has moved this application seeking condonation of 475 days delay in filing an appeal against the impugned judgment and order dated 12.09.2012 of acquittal, passed by the trial Court in Sessions Case No. 13 of 2003.

2. Heard learned counsel for the applicant, APP for the respondent/State and counsel representing respondent Nos. 2 to 6.

3. In nutshell, it is the contention of the learned counsel for the applicant that the delay was not

deliberate. He submits that on 06.04.2002 two cross complaints were registered against the rival parties. On investigation the separate charge-sheets were filed. Both the cases were tried before the same Court. Vide judgment and order dated 12.09.2012 the learned Additional Sessions Judge acquitted the accused in both the cases. As against the judgment and order dated 12.09.2012 passed in Sessions Case No.99/2002 the State Government has preferred the appeal before this Court. The appeal preferred by the State was listed before the Division Bench of this Court and same was admitted. On receipt of notice dated 10.12.2013 the applicants came to know about filing of appeal against them. The notices were received on 02.02.2014. On enquiry it was revealed that the State Government has not preferred appeal against the acquittal, in the case instituted on the basis of complaint lodged by the father of the applicant. Thereafter the applicant has taken steps to file an appeal. The appeal was presented on 27.02.2014. Since there is delay in filing an appeal, the application for condonation of delay came to be filed. In this background the learned counsel submits that the delay caused was not deliberate. There is sufficient cause to condone the delay. He further submits that the applicant has meritorious case to be considered in appeal. Although the trial court has acquitted the accused in both the cases,

in one case the State Government has deliberately neglected to file an appeal in another case, though the reasons for acquittal were more or less.

4. On the other hand learned counsel for respondent Nos. 2 to 6 has opposed the application with contention that the no sufficient casue has been assigned to condone the delay. Learned counsel placed reliance on the decision of the Karnataka High Court in the case of Hiriyanna S/o. Puttappa V/s The State of Karnataka and others (Criminal Appeal No.661 of 2015). Learned APP submits that the respondent /State submits to the orders of the Court.

6. Having appreciated the submissions advanced in the light of cause assigned to condone the delay I am of the view the applicant has sufficiently explained the delay in filing the appeal alongwith leave to file an appeal. The delay filing an appeal cannot said to be deliberate or intentional. Since the State Government has not preferred the appeal against the impugned judgment the son of the victim has opted to prefer appeal as per right conferred under Section 372 of the Criminal Procedure Code after receipt of notice in appeal filed by the State Government in criminal case Ruling relied on the case of Hiriyanna S/o. Puttappa V/s The State of

Karnataka and others (Criminal Appeal No.661 of 2015) (Supra) have no bearing upon the the present case. It is settled law that while condoning the delay, the Court is expected to adopt liberal approach, so as to ensue that a meritorious matter may not be rejected for technical reason. I am, therefore, inclined to allow the application and condone the delay. Accordingly the application is allowed. Delay is condoned. The application seeking leave to file an appeal be registered and placed for hearing on **19.04.2017**. Learned APP and learned Advocate for respondent Nos. 2 to 6 waives service of notice of application seeking leave to file an appeal.

7. Stand over to **19.04.2017**.

[V.L.ACHLIYA, J.]