

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.20 OF 2016
IN
CRIMINAL APPEAL NO.358 OF 2013
WITH
CRIMINAL APPLICATION NO.21 OF 2016
IN
CRIMINAL APPEAL NO.358 OF 2013**

Union of India)...Applicant

V/s.

Lanting Rey Panganiban and Anr.)...Respondents

Smt. A.A.Mane, Advocate for the Applicant.

Smt. Archana Khan, Advocate for R.No.1.

Ms. A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th MARCH, 2017.

P.C. :

These applications are for condonation of delay in filing application for restoration of the appeal as well as for restoration of the criminal appeal.

2 Keeping in mind basic principle that act of the Court should not prejudice anyone, these applications will have to be

considered.

3 Basic facts are thus:

Respondent herein came to be acquitted of the offences punishable under Sections 29 read with 8(c) and 21, 21 read with 8(c), 28 read with 23 and 8 (c) of the NDPS Act, 1985 by the learned Special Judge under NDPS Act on 12.12.2011. This judgment and order of acquittal was sought to be impugned by filing an application for leave to appeal which came to be registered as Criminal Application No.611 of 2012. The said application came to be allowed by following order of 19.3.2013:

“1 Heard learned Counsel appearing for the applicant. Leave is granted. Criminal Application is disposed of.

2 Issue notice before admission of the appeal to Respondent No.1. Learned APP waives service for Respondent No.2.

3 Learned Counsel for the applicant seeks leave to add certain documents. Leave is granted. Documents be submitted on record within 3 weeks.”

It is seen from this order that leave as prayed was granted for

challenging judgment and order of acquittal. In pursuant to leave so granted, Criminal Appeal came to be registered and numbered as 358 of 2013. As seen from the order dated 19.3.2013, the learned Advocate appearing for the Applicant-Prosecuting Agency sought leave to produce some documents on record and leave to produce documents also came to be granted.

Then came conditional order passed by this Court on 9.4.2013 in Criminal Appeal No.358 of 2013 which reads thus:

“1 As a last chance one week's time is granted to the appellant to furnish copies of depositions and the copy of seizure panchanama and copy of C.A.Report Exh.54. Compliance is to be made on or before 16th April, 2013. On failure to make necessary compliance by that date, the appeal shall stand dismissed without further reference to the Court. In the event of compliance, list the matter on 18th April, 2013.”

This shows that last chance came to be granted to the appellant to furnish copies of deposition, seizure panchanama, etc. by granting a week's time. It was stated that failure to comply shall result in dismissal of the appeal. Consequently, the appeal came to be

dismissed in default by holding that order dated 9.4.2013 was not complied with by the appellant.

4 Heard learned advocate appearing for the applicant-appellant. By drawing my attention to the pursis at Exhibit B dated 12.2.2013 as well as averments made in duly sworn application for restoration of appeal, the learned advocate for the applicant-appellant submitted that documents which were directed to be produced by order dated 9.4.2013 were already produced on record by the applicant-appellant on 12.2.2013 itself but pursis was showing number of criminal applications and not number of appeal and, therefore, subsequent order dated 9.4.2013 came to be passed and the appeal came to be dismissed. This has occasioned filing of application for restoration as well as condonation of delay in filing application for restoration. The learned advocate appearing for the Respondent-Original Accused opposed the application by contending that condition laid down by this Court in the order dated 19.3.2013 so also by order dated 9.4.2013 was not followed. Documents were not annexed in time. It is further argued no proper explanation for delay is given in the

application for condonation of delay in the matter where liberty of a person is under challenge.

5 I have carefully considered the rival submissions. The acquittal is for the offences under NDPS Act of 1985. Averment is to the effect that the respondent was found in possession of heroine weighing 1.1 kg. The order dated 19.3.2013 passed by this Court in Criminal Application No.611 of 2012 shows that this Court had upon finding that arguable points are made out, granted leave to appeal. This factually amounts to admission of the appeal. Averments in duly sworn affidavit of Criminal Application bearing No.21 of 2016 made by the responsible officer shows that on 12.2.2013 itself the documents such as notes of evidence, copies of panchanama and Exhibit 54 came to be produced on record of this Court. Those were produced in Criminal Application No.611 of 2012 on 12.2.2013 as seen from the document at Exhibit 'B' annexed to the Criminal Application No.21 of 2016 for restoration of the appeal. It appears that because of grant of leave, Criminal Application bearing no.611 of 2012 came to be re-numbered as Criminal Appeal No.358 of 2013.

Subsequently, again this Court vide order dated 9.4.2013 in Criminal Appeal No.358 of 2013 had directed for production of copies of deposition, seizure panchanama and C.A.Report Exhibit 54. Apparently those documents were filed before this Court in Criminal Application No.611 of 2012 on 12.2.2013 itself. I see no reason to disbelieve duly sworn testimony of Mr. C.R.Baviskar, Assistant Commissioner of Customs who has vouched about this aspect in paragraph 3 of the application for restoration of appeal. On this factual backdrop, it needs to be noted again that mistake of the Court should not prejudice anybody and, therefore, Criminal Appeal ought not to have been dismissed in default merely adhering to technicalities. Resultantly, the delay in filing an application for restoration gets sufficient explanation and amounts to 'sufficient cause'. The appeal deserves to be restored as primary function of the Court is to adjudicate dispute on its own merits rather than adhering to the technicalities of the procedure. Criminal Applications bearing Nos. 20 and 21 of 2016 are therefore allowed. The delay in filing application for restoration of the Criminal Appeal as well as application for restoration of the

appeal are allowed. Criminal Appeal bearing no. 358 of 2013 is restored to the file.

(A. M. BADAR, J.)