

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3813 OF 2016

Santosh S/O. Hiraji Koparkar
V/s.

....Petitioner

The State of Maharashtra and Ors.

....Respondents

* * * * *

Mr. S.R. Soni, advocate for the petitioner.

Mr. S.R. Agarkar, APP for respondent, State.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 30TH JANUARY, 2017.

P.C. :-

1). By the order dated 18th November, 2016 when notice was issued to respondent no.2, it was directed that the notice shall indicate that the matter will be decided finally at the stage of admission. Respondent no.2, despite service of notice has not appeared before the Court. On 23rd January, 2017 the petitioner filed an additional affidavit to support the petition. Additional affidavit, has also been served upon respondent no.2. Even after service of additional affidavit, respondent no.2 has not appeared before the Court.

2). This petition challenges the order dated 11th August,

2016 by which the District Judge and 8th Additional Sessions Judge, Thane dismissed the petitioner's application for condonation of delay in filing appeal. The petitioner has been convicted of the offence punishable under Section 420 and under Section 506 Indian Penal Code. He has been sentenced to suffer simple imprisonment for 2 years and to pay fine of Rs.5,000/- for the offence punishable under Section 420 Indian Penal Code. For the offence punishable under Section 506 Indian Penal Code, he is sentenced to suffer simple imprisonment for 6 months. He is also directed to pay a fine of sum of Rs.2,00,000/- to respondent no.2 by way of compensation to be paid within a period of 3 months.

3). The petitioner had filed an application for condonation of delay contending therein that, there were several difficulties created by his advocate in filing the appeal. Also that, at the relevant time, he was unwell as he was suffering from jaundice and was bedridden. The District Court dismissed his application, holding that, the petitioner had failed to explain the delay satisfactorily. It observes that, there is no evidence led on the explanation and no documents produced in support of the claim of illness.

4). In the additional affidavit, filed in this Court, the petitioner has stated the details as to how the advocate approached by him for filing appeal had despite accepting the professional fees, not filed the appeal and had infact misled the petitioner that the appeal had been filed but was yet to be numbered. The petitioner, in the month of February, 2015 was diagnosed for jaundice and was taking treatment for about 2 months. When he received notice from

Taloja Police Station, seeking his explanation as to why warrant be not executed against him, in view of the conviction, he tried to contact the advocate who did not respond. Therefore, he personally went to the Sessions Court at Thane and realised that there was no appeal filed. He was then arrested and sent to Central Prison directly. Considering all these circumstances, in my opinion, the petitioner deserves to be given an opportunity of having his appeal heard on merits by condoning delay in filing the appeal. Hence, the petition is allowed. The order dated 11th August, 2016 passed by the Hon'ble District Judge and Additional Sessions Judge, Thane on Cri. Miscellaneous Application No. 330 of 2015 is set aside. The petitioner's Miscellaneous Application No. 330 of 2015 is allowed.

(SMT. R.P. SONDURBALDOTA, J)