

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.243/2017

State,
through the Police Inspector (major)
Canacona Police Station,
Canacona, Goa. Applicant.

Versus

Pritam Kumar, (Major)
s/o. Sube Singh,
Native of Village Rajpura, Tehsil, Patodi,
District Gudgaon, Haryana, Respondent.

Mr. S. R. Rivankar, Public Prosecutor for the applicant.

Mr. Vibhav Rajiv Amonkar, Advocate for the respondent.

***Coram : C.V. Bhadang &
Nutan D. Sardesai, JJ.***

Date : 8th February 2018.

P.C. :

This is an application for condonation of delay of 175 days in filing an application for leave to appeal against acquittal.

2. The respondent was prosecuted for the offence punishable under Section 376 IPC., read with Section 8(2) of the Goa

Children's Act, 2003 and by the impugned Judgment dated 19th September, 2016, the learned President of the Children's Court has acquitted the respondent.

3. In so far as the delay is concerned, it is contended that by a letter dated 28th September, 2016, the Public Prosecutor had given his opinion to the SDPO, Quepem for filing an appeal. However, on account of the fact that the SDPO was preoccupied with the arrangements for security at the BRICS summit, immediate steps could not be taken in the matter. The subsequent delay was on account of the arrangements for elections to the Goa Legislative Assembly which was scheduled on 4th February, 2017. In the interregnum, there were certain queries by the Director of Prosecution which were accordingly complied with and on 8th May, 2016, the proposal was resubmitted to the Director of Prosecution for legal opinion. It is on account of these circumstances that the delay has occurred.

4. The learned Counsel for the respondent has filed an affidavit-in-reply and has opposed the application on the ground that no sufficient cause has been made out and the time spent in the movement of the files in another department is not a good ground for condoning the delay.

5. On hearing the learned Counsel for the parties and on taking note of the decision of the Apex Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors.***, (2013) 12 SCC 649, we find that a sufficient cause has been made out. It is now well settled that although in cases of gross delay a strict view has to be taken in the matters where the delay cannot be said to be undue or of gross nature, the Court can take a liberal view. We are satisfied that the applicant has made out sufficient cause to condone the delay.

6. The application is, accordingly, allowed. The delay is condoned. Let the Criminal Application for leave to appeal against acquittal be registered. The application to stand over for admission on 22nd February, 2018.

Nutan D. Sardesai, J.

C.V. Bhadang, J.