

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.586 OF 2016

Janu Bhika Bangar	..Applicant.
V/s.	
Narayan Bhiwa Vyapari & Anr.	..Respondents.

Ms.Payoshi Roy i/b. Dr.Yug Mohite Chaudhary for the applicant.

Mrs.N.S.Jain,APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : FEBRUARY 28, 2018

PC.:-

Heard the learned counsel for the parties.

2. By an order dated May 7, 2008, the learned Judicial Magistrate First Class, Kalyan convicted the applicant for an offence punishable under section 323 read with 34 of the Indian Penal Code. Against the said conviction, a Miscellaneous Application No.49/2008 was filed seeking condonation of delay in filing the appeal, which came to be dismissed on January 27,

2010. The learned counsel for the applicant submits that the cause of dismissal is, failure on the part of the advocate for applicant to take appropriate steps in the matter. She sought to draw support from the judgment of the Apex Court in case of *Rafiq and another V/s. Munshilal and another*¹ so as to substantiate her contention that for default on the part of the lawyer, a litigant need not suffer.

3. The learned APP opposed the claim of the claim and submits that the applicant was not diligent enough, hence Appellate Court was right in dismissing the appeal. He submits that if indulgence is to be shown, the applicant be put to severe terms.

4. Having heard the submissions made, in the interest of justice, it would be appropriate, in my opinion, to set aside the order dated January 27, 2010 dismissing the application of the applicant for condonation of delay in filing the appeal, subject to payment of costs of Rs.1,500/- to be paid to the Legal Services Committee, District Court, Thane within a period of four weeks from today. If the cost is paid before the stipulated period, the

1 A.I.R 1981 Supreme Court 1400

order dated January 27, 2010 is quashed and set aside and the appeal preferred by the present applicant against his conviction vide judgment and order dated May 7, 2008 shall stand restored to the file of the learned Sessions Judge.

5. The applicant shall produce receipt of payment of costs with the Legal Services Committee, District Court, Thane before the learned Sessions Judge, before whom the appeal is pending. The payment of cost is condition precedent.

6. If the costs as ordered is not paid, the order of dismissal of the appeal shall hold the field.

(NITIN W.SAMBRE, J.)