

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2979 OF 2018

Subhasish Mallick (Child in Conflict
with Law)@ Rafiq Bairagi Charan Mallick ... Petitioner.

Vs.

State of Maharashtra & Ors. ... Respondents

...

Mr. Nilesh Y. Ukey a/w Ms. Maitrayee Gadhave for the Petitioner.

Mrs. M.R. Tidke, APP for the Respondent-State.

Mr. Aditya Pratap for the Respondent No.3.

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CORAM : PRAKASH D. NAIK, J.

DATE : 31st JULY, 2018.

P.C.

1. The petitioner is a child in conflict with law (CCL). The petitioner is aggrieved by the order passed by the Sessions Court on 25th June, 2018 condoning the delay in preferring appeal preferred by the intervener. The respondent No.2 is the original complainant in FIR No. 506/2016. The respondent No.3 is the father of deceased who intervened in CC No. 111/JW/2017 pending before Principal Magistrate Juvenile Justice Board under provisions of Section 301 of Code of Criminal Procedure. On 28th February, 2018, the Principal Magistrate, Juvenile Justice Board,

Dongri, Mumbai passed order that, provisions of conducting preliminary assessment under Section 15 of Juvenile Justice (Care and Protection of Children) Act are not applicable in this case. The respondent No.3 / Intervenor filed appeal with application for condonation of delay. The petitioner opposed the application for delay and raised preliminary objection that Respondent No.3 had no *locus standi* to prefer such application. The Sessions Judge allowed application for condonation of delay and thereby delay of 34 days was condoned.

2. It is submitted by the counsel for the petitioner that the appeal itself was not maintainable and that Respondent No.3 has no locus to prefer such proceedings the Court ought not to have entertained the application for condoning the delay.

3. The Sessions Court has directed registration of appeal. Appeal is pending before the Sessions Court and the same is listed for hearing on 1st August, 2018. Since the said appeal is pending, it would be appropriate for the appellate Court to decide the issue of maintainability and locus of Respondent No.3 to prefer such appeal. The delay of 34 days has been condoned by the said Court by reasoned order.

4. In the circumstances, without disturbing the order dated 25th June, 2018, the Sessions Court is directed to deal with appeal in accordance with law. Taking into consideration the nature of preliminary objection raised by the petitioner it would be appropriate for the Court to decide the preliminary objection and then proceed with the merits of the case. Sessions Court shall decide the appeal in accordance with law without being influenced by this order or order dated 25th June, 2018. All issues raised by both parties are kept open in the petition. Petition stands disposed of.

Sachidanand
Kuttan Nair

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Kuttan Nair
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(PRAKASH D. NAIK, J.)