

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.444 OF 2016

Union of India, through CBI	Applicant
versus	
Shaikh Farok Sheikh Usman and another	Respondents

Ms.Ameeta Kuttikrishnan for applicant-CBI.
Mr.D.B.Deshmukh for respondent no.1.
Ms.Kranti T. Hiwrale for respondent no.2.
Mrs.M.R.Tidke, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th June 2018

PC :

1. The applicant-CBI has preferred this application challenging the order passed by Sessions Court dated 2nd May 2016 rejecting the application for condonation of delay. CBI had preferred an appeal before the Sessions Court challenging the judgment and order of acquittal dated 29th April 2014 passed by Chief Judicial Magistrate, Pune in Regular Criminal Case No.403977 of 2006. There was a delay of 157 days in preferring the said appeal. Hence, an application for condonation of delay was filed. Learned Additional Sessions Judge, Pune rejected the said application. It was observed in the order that there was no proper explanation for condonation of delay and except stating that there was departmental delay, no other plausible explanation was given by the appellant.

2. Learned advocate for applicant submits that the Sessions Court ought to have taken liberal approach in dealing with the application for condonation of delay. It is submitted that pursuant to the judgment of acquittal, the application for obtaining certified copy was made and thereafter copy of judgment was received on 10th June 2014. Thereafter comments of the Public Prosecutor were sought for and after taking the opinion the appeal was filed. Learned advocate for applicant relied upon the decision of Hon'ble Supreme Court in case of **State of Haryana Vs. Chandra Mani and others** (1996)3-SCC-132.

3. Learned advocate for respondents vehemently opposed the reliefs sought in this application. It is submitted that CBI had adopted casual approach and except stating that there was departmental delay, no other explanation was tendered. Learned Sessions Judge has therefore rejected the application for condonation of delay. There is no reason to interfere with the said order. It is submitted that even while arguing the said application, learned counsel for CBI was not present and the Court had to go through the record and decide the application.

4. Be that as it may, the Court cannot take a rigid approach in deciding the application for condonation of delay. The department has to resort to various steps before filing of the appeal including inviting comments from public prosecutor and thereafter the appeal is filed against the order of acquittal. An opportunity has to be given to the appellant to challenge the order of acquittal on merits. In the circumstances, delay in filing the appeal ought to have been condoned by the Appellate Court.

5. In the light of aforesaid observations, the order passed by learned Sessions Judge rejecting the application for condonation of delay is set aside. The delay is condoned. The Sessions Court is directed to hear the appeal on merits and in accordance with law. Criminal Revision Application No.444 of 2016 stands disposed off.

(PRAKASH D. NAIK, J.)

MST