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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4763 OF 2017

Deepa Vasant Karmarkar

@ Sou. Radha Kishore Mandalik

..Petitioner.

V/s.

Kishor Rambhau Mandalik & Ors.

..Respondents.

Mr.Abhaykumar Apte for the petitioner.

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

Mr.Rajesh A. More for respondent No.3.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 14, 2018

PC.:-

Heard respective parties.

2. On September 20, 2013, the learned Magistrate, Pune in Case No.0800867/2013 framed charge against the accused persons.

3. On February 20, 2015 the learned APP moved an application under section 240 of the Code of Criminal Procedure

for framing of additional charge under section 496 of the Indian Penal Code which came to be rejected by the impugned order passed by the Magistrate on March 6, 2017, which was confirmed in a revision by the Additional Sessions Judge, Pune, as the application for condonation of delay being Criminal Miscellaneous Application No.257/2017 was rejected vide order dated September 18, 2017. As such, this petition.

4. The learned counsel for the petitioner, in response to a Court's query would urge that the petitioner-complainant had a statutory right to prefer an appeal against the acquittal. Based on the said analogy under Code of Criminal Procedure, he claims that he has every right to prefer the present proceedings pursuant to the order of rejection to condone the delay, including revision against the orders of the Magistrate and also the order of the revisional Court refusing to condone delay.

5. I am afraid such powers cannot be exercised casually particularly in the wake of the fact that the only powers which are conferred under the Code of Criminal Procedure on a complainant in a police case is right to prefer an appeal to the complainant.

6. If the prosecution is aggrieved by the order of the Magistrate in refusing to frame a charge under section 496 of the Indian Penal Code, the prosecution has every liberty to take necessary steps in the matter.

7. With these observations, I hardly notice any right in the present petition. The petition is dismissed.

(NITIN W.SAMBRE, J.)