

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 362 OF 2019

Namdev Vishnu Shelke,
Age : 25 years, Occu. Education,
R/o Kadwanchi, Tq. & Dist. Jalna.

...Petitioner

Versus

The State of Maharashtra,
Through Taluka Jalna Police
Station,
Tq. & Dist. Jalna.

...Respondent

.....
Mr. Suvidh S.Kulkarni, Advocate for Petitioner.
Mr. S.P.Sonpawale, A.P.P. for Respondent.

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CORAM : V.M. DESHPANDE, J.

DATE : 19TH MARCH, 2019

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by consent of both the parties.

02. Heard the learned Counsel for the petitioner and the learned A.P.P. for the State.

03. The present petitioner was shown as accused No. 5 in the R.C.C. No. 533 of 2013 tried in the Court of learned 4th Jt. J.M.F.C. Jalna. By the

Judgment dated 22.8.2016, the learned Magistrate convicted the petitioner for the offence punishable under Sections 147, 323 read with 149 of the I.P.C. and directed to pay fine of Rs. 500/- each in default to suffer simple imprisonment for 10 days and also convicted the petitioner for the offence punishable U/s 147 of the I.P.C. and directed to pay fine of Rs. 700/- each in default to suffer simple imprisonment for 15 days for the offence punishable under Section 323 read with Section 149 of the I.P.C.

04. After said Judgment of conviction, the petitioner preferred an appeal before the Court of Sessions Judge, Jalna. However, the said appeal was barred by limitation. Therefore, an application U/s 5 of the Limitation Act was filed. The said application was registered as Cri.M.A.No. 65/2017. The learned Appellate Court exercised its discretion in favour of the present petitioner and condoned the delay on a condition that the petitioner should deposit Rs.2,500/- by way of costs within a period of 15 days. Failing which, the Court observed that it will be treated as rejection of application of condonation of delay.

05. It appears that within the stipulated period, the petitioner could not deposit the costs of Rs.2,500/-. Therefore, on 24.1.2019 the application was moved for payment of costs of Rs. 2,500/-. However, the said application was rejected on 24.1.2019 itself. The said order is under challenge.

06. No doubt, the petitioner could not deposit Rs. 2,500/- within the stipulated period, however, once the Appellate Court had exercised its discretion of condoning the delay, the Appellate Court ought to have granted permission to deposit Rs. 2,500/-. Even otherwise, the substantive justice should not be denied to any litigant for non-payment of costs.

07. In that view of the matter, I pass the following Order;

ORDER

(i)Writ Petition is allowed.

(ii)The Order dated 24.1.2019 passed by the learned Additional Sessions Judge, Jalna is hereby set aside.

(iii)The petitioner is permitted to deposit

the amount of Rs.2,500/- in the lower Appellate Court within a period of one week from today.

(iv) Criminal Misc. Application No. 65/2017 filed by the petitioner/applicant for condonation of delay stands allowed.

(v) The appellate Court is directed to register the criminal appeal and decide the same in accordance with law.

(vi) With this, writ petition is allowed and disposed of.

[V.M. DESHPANDE]
JUDGE

Dahibhate/-