

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.742 OF 2019

- 1] Lilabai d/o Devram Sapkale
Age 66 years, Occ-Retired.
- 2] Sitaram s/o Shankar Suryawanshi
Age 65 years, Occ-Nil
R/o – Plot No.15, Vivek Colony
Near Sambhaji Rikshaw Stop,
Jalgaon, District – Jalgaon. .. PETITIONER
(Ori.Accused No.1&2)

VERSUS

- 1] The State of Maharashtra
Through Deopur Police Station,
Dhule, District Dhule
- 2] Rajendra s/o Sitaram Suryawanshi
Age Major, Occ-Agriculture
R/o – Plot No.49, Bhoite Nagar
Pimprala Road, Near Railway Gate
Jalgaon, District Jalgaon.
- 3] Raju s/o Shankar Suryawanshi
Age Major, Occ-Service
R/o – Plot No.55(B),
Sudarshan Colony,
Deopur, Dhule
District Dhule. .. RESPONDENTS
[Respondent No.1 is Ori.
Prosecutor & Respondent
Nos.2&3 are Ori.Accused
Nos.3 & 4.]

Mr.Sandesh R.Patil, Advocate for petitioners
Mr.S.B.Joshi, APP for respondent No.1 State
R.2 & 3 are served.

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CORAM : MANGESH S. PATIL,J.**DATE : 21/09/2019****ORAL JUDGMENT :**

Heard. Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The petitioners who are the original accused who have been acquitted by the learned Magistrate by judgment and order dated 20/10/2015 for the offences punishable under Sections 418, 420 read with Section 34 of the Indian Penal Code are impugning the order passed by the learned Additional Sessions Judge whereby delay of 368 days in preferring the appeal against acquittal has been condoned.

3] The learned advocate for the petitioners submits that there has been enormous delay in preferring the appeal against acquittal and no sufficient cause was shown in the application. The witnesses who have been examined on behalf of the State taking up the blame for causing the delay are got up witnesses. There is no reference to their role in the entire application for condonation of delay. The petitioners have been honourably acquitted. Condoning the delay would certainly cause serious prejudice to them. The State is not entitled to any special concession, as has been laid down in the case of **Amalendu Kumar Bera and others V/s State of West Bengal; (2013) 4 S.C.C. 52** and **Union of India and others V/s Nripen Sarma; (2013) 4 S.C.C. 57.**

4] The learned APP submits that the State machinery has to

undergo several procedures and steps before preferring appeal. A proposal is forwarded by the Government Pleader's office. It is processed by the Collector, then it goes to the Law and Judiciary Department for its approval. It is only thereafter that the appeal can be filed. This procedure is lengthy. The file moves to several places and consumes time. That is what has precisely happened in the matter in hand. The witnesses examined by the State have specifically come out with their version as to how they were to some extent responsible for the delay. Considering all these aspects, the learned Additional Sessions Judge has exercised the discretion objectively. By no stretch of imagination can it be said to be capricious and perverse exercise of the jurisdiction so that this Court could intervene by invoking the writ jurisdiction. The delay was not caused intentionally nor was there anything to attribute any *mala fides* on the part of the State machinery to cause the delay in preferring the Appeal.

5] I have carefully gone through the impugned orders, judgments cited by the learned advocate for the petitioners.

6] Indeed the State cannot seek any special concession as far as the Limitation Act is concerned. It has to be treated like any other litigant and is duty bound to explain the delay.

7] True it is that in the application for condonation of delay there is no reference to the role played by the two witnesses Sudhir Bhamre (P.W.No.1) and Anil Borse (P.W.No.2) as to in what manner they were responsible for causing the delay and still they have stepped in the witness box and have come out with their individual versions as to how they had played some role in processing the appeal filed

which ultimately resulted in causing delay. However, merely for this reason, one could not have brushed aside their testimony particularly when they were open for cross examination.

8] It is trite that while considering the question of delay, it has to be ascertained whether a party which is likely to suffer for causing the delay would gain anything by causing the delay or not preferring proceeding within the time prescribed by the Limitation Act. Unless there is some motive attributable to such a party normally Courts would tend to condone the delay.

9] True it is that the petitioners have been acquitted and once the appeal is allowed to be registered by condoning the delay they would have to contest the appeal and in that sense they would be prone to the consequences. However, it is not a matter of consequence which needs to be borne in mind while assessing if prejudice is likely to be caused to a party. They would certainly get an opportunity to contest the appeal and in that sense no prejudice would be caused to them.

10] All the aforementioned facts, circumstances and evidence has been objectively considered by the learned Additional Sessions Judge. By no stretch of imagination can it be said that those are either perverse, arbitrary or capricious so that this Court can intervene in the writ jurisdiction.

11] The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL,J.)

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