

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 55 OF 2019

IN

STAMP NUMBER MAIN NO. 3161 OF 2018

SHRIKANT GARJU.,

... Applicant

Versus

VISHNU PRABHU AND ANR.,

... Respondents

WITH

STAMP NUMBER (APPLN.) NO. 3162 OF 2018

IN

STAMP NUMBER MAIN NO. 3161 OF 2018

Shri. Jatin Ramaiya, Advocate for the applicant.

Shri. Prasad Dessai, Advocate for the respondent No.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 11th April 2019

P.C.:

It was the contention of Shri. Jatin Ramaiya, learned Advocate for the applicant that time was spent pursuing the restoration application before the learned J.M.F.C. on dismissal of the complaint vide the Order dated 06.02.2018. Thereafter under legal advice, he had pursued the matter before the learned Sessions Judge in a revision seeking for the restoration of the proceedings and for setting aside the order of acquittal. This time spent by him of approximately 170 days had to be excluded from the period of limitation in pursuing the appeal, and therefore, the delay had to be condoned in preferring the appeal.

2. Shri. Prasad Dessai, learned Advocate for the respondent No.1 submitted that the delay has not been explained by the applicant and therefore the application had to be dismissed.

3. There was no singular dispute of the fact that the applicant had pursued his remedy before the learned J.M.F.C. by seeking the restoration of the complaint and a reversal of the Order dated 06.02.2018. There was equally no dispute of the fact that the applicant had in good faith pursued a remedy of revision on the basis of legal advice, which was actually not tenable, considering the nature of the order passed by the learned J.M.F.C. and that he had proved his case. The time spent by the applicant in bonafide pursuing the remedy before the Sessions Court and before the learned J.M.F.C. are required to be excluded from the delay in filing the appeal.

4. In view thereof, the application is allowed. The delay is condoned. The Registry to register the application for special leave to appeal. The application accordingly stands disposed off.

NUTAN D. SARDESSAI, J.