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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2023 OF 2018

Shantibhai N. Gohil and Anr. ... Petitioners

Versus

State of Maharashtra and Anr. ...Respondents

Mr. Manoj Harit a/w Mr.Akhil Kupade, i/b Manoj Harit & Co., for the Petitioners.

Mr. P. H. Gaikwad-Patil A.P.P for the Respondent No.1 - State.

Mr.S.H.Chari, for the Respondent No.2.

PSI – N.B. Jadhav, Gamdevi Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th NOVEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the Respondent No.1–State. Mr.Chari, waives notice on behalf of Respondent No.2.
3. By this Petition, the Petitioners have impugned the order dated 3rd January, 2018, passed by the learned Additional Sessions Judge,

City Civil Court, Greater Mumbai, below Miscellaneous Application No.1969 of 2017 (for delay condonation) in Revision Application No.... of 2017, by which the petitioners delay condonation application was rejected.

4. Learned Counsel for the Petitioners submitted that the petitioners have given detailed explanation in the delay condonation application, thereby setting out the reasons for delay in filing the Revision Application. He submitted that the learned Additional Sessions Judge, ought to have considered the explanation offered by the petitioners and condoned the delay of 109 days.

5. Learned Counsel for the Respondent No.2 opposed the petition and submitted that no interference was warranted in the impugned order. He further submitted that the advocate had obtained the certified copy of the impugned order on 17th June, 2017, despite the same, there was delay in filing the Revision Application. He submitted that the original advocate appearing for the petitioners had also handed over all the papers concerning the case of the petitioners and as such the Revision Application ought to have been filed within 90 days.

6. Perused the papers. It appears that the Respondent No.2 (Original Complainant) had filed an application being Exhibit – 31 for further investigation. The learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, vide order dated 12th April, 2017, allowed the said application (Exhibit – 31) preferred by the Respondent No.2 and directed the Office-in-Charge of the Gamdevi Police to further investigate the crime. Being aggrieved by the said order dated 12th April, 2017, passed below Exhibit – 31, the petitioners preferred a Revision Application alongwith a Miscellaneous Application. The learned Additional Sessions Judge, vide order dated 3rd January, 2018, rejected the Miscellaneous Application filed for condonation of delay caused in filing the aforesaid Revision Application and refused to condone the delay caused in filing the Revision Application. Hence, this Petition.

7. A perusal of the petition shows that the petitioners have been represented earlier by another advocate. It also appears that the earlier advocate had applied for a certified copy of the impugned order dated 12th April, 2017, on 16th June, 2017, which was received on 17th June, 2017. It also appears that thereafter after obtaining the NOC from the earlier advocate, the petitioners approached the present advocate on record, after which, a new advocate applied for the Roznama on 15th September, 2017,

which was received on 16th September, 2017. Pursuant thereto, the aforesaid Revision Application was filed. The delay caused in filing the Revision Application cannot be said to be either deliberate or malafide. The petitioners had offered an explanation for filing the Revision Application belatedly. Hence, in the interest of justice, the delay condonation application ought to have been allowed and delay of 109 days caused in filing the Revision Application, ought to have been condoned.

8. Accordingly the petition is allowed. The impugned order dated 3rd January, 2018, passed by the learned Additional Sessions Judge, City Civil Court, Greater Mumbai, below Miscellaneous Application No.1969 of 2017 (for delay condonation) in Revision Application No.... of 2017, rejecting the said application, is quashed and set aside.

9. The delay caused in filing the Revision Application is condoned, subject to the petitioners paying the Respondent No.2, costs of Rs.10,000/-, within three weeks from today. On showing payment of costs, the Revision Application be restored back to its original file and be numbered. The learned Judge to decide the said Revision Application expeditiously.

10. Rule is made absolute in above terms.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.