

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.1225 OF 2018
WITH
CRIMINAL APPLICATION NO.1040 OF 2019
IN
CRIMINAL APPEAL NO.1225 OF 2018**

DIEGO GREGORY MATHIAS)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & OTHERS)...RESPONDENTS

WITH

**CRIMINAL APPLICATION NO.378 OF 2019
IN
CRIMINAL APPEAL NO.1225 OF 2018**

ALI ASGAR PETIWALA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & OTHERS)...RESPONDENTS

Mr.S.A.Sawant a/w. Mr.Heramb Kadam i/b. Mr.Sherikar,
Advocate for the Appellant.

Mr.K.M.Sangani, Advocate for Respondent No.3.

Mr.V.B.KondeDeshmukh, APP for the Respondent – State.

Mr.Nikhi Choudhari a/w. Mr.Ravish Mishra and Mr.Nishith Sharma i/b. Mr.Vijay Dhingreja, Advocate for Respondent Nos.5 and 6.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 8th AUGUST 2019

P.C. :

CRIMINAL APPLICATION NO.1040 OF 2019

1 Heard the learned counsel for the respective parties. In the present appeal, peculiar situation has arisen in as much as this court by its order dated 21st November 2018 took note of the objection raised by respondent nos.5 and 6 that the appeal was filed beyond limitation and also took further note of the submissions of the learned counsel for the appellant and granted time to the appellant to file an application for condonation of delay. But it appears that no such application for condonation of delay was filed by the appellant and instead, on the subsequent date i.e. on 18th December 2018, this court in its order took note

of the aforesaid fact, but considering the fact that the Office note of the Registry indicated that the appeal had been filed in time, did not insist on filing of any application for condonation of delay and admitted the matter.

2 It appears that subsequent thereto, after the pleadings were complete, the learned counsel for respondent nos.5 and 6 filed a praecipe before the Registry pointing out that the Office note that had been originally prepared was erroneous and there was a delay of 64 days in filing of the appeal. Based on the said praecipe filed by respondent nos.5 and 6, a fresh Office note came to be prepared indicating delay of 64 days.

3 Subsequently thereto, since the fresh Office note indicated a delay of 64 days, the appellant has filed the present application seeking condonation of delay. The learned counsel for the appellant submits that the appellant had originally challenged the judgment and order dated 10th April 2018 before the High Court by way of Criminal Writ Petition No.3169 of 2018 on 18th

July 2018. It is submitted that the writ petition was filed within the period of time prescribed for filing a statutory appeal. However, the appellant withdrew the said criminal writ petition on 10th September 2018 with liberty to file a substantial appeal and the present appeal came to be filed on 9th October 2018. It is further asserted on behalf of the appellant that when the appeal was filed before this court, an application for condonation of delay was also prepared to be filed before this court on 28th November 2018, but at that time since the Registry indicated that the appeal had been filed within time, the application for condonation of delay was not filed before the Registry.

4 The learned counsel appearing for respondent nos.5 and 6 strenuously urged that the application for condonation of delay, at this stage, could not be entertained and ought not to be entertained since the appellant ought to be aware of the legal recourse available under the law and cannot be allowed to take advantage having approached the High court by filing writ petition instead of a substantial appeal. Apart from that, it is

asserted on behalf of respondent nos.5 and 6 that an application for condonation of delay cannot be entertained, in view of the fact that the appeal itself had been admitted by this court on 18th December 2018.

5 Having heard the learned counsel for the respective parties and perused the application for condonation of delay, it is well settled principle of law that no litigant before a court can be held responsible for, either for an error committed by the Registry of this court or by orders passed by this court. True it is that respondent nos.5 and 6 had raised an objection regarding limitation as evident from the order dated 21st November 2018. However, on the next date, when the matter came up before this court, since the Registry of this court in the Office note had not indicated any delay in filing of the appeal, consequently, the court proceeded on the basis of the said Office note and passed orders of admission. We are of the considered view that the order was passed on the basis of the Office note of the Registry and even assuming and accepting the fact that the Office note was

erroneous, the subsequent Office note, based on the praecipe submitted by respondent nos.5 and 6, has sought to correct the error committed in the earlier Office note.

6 We are, therefore, of the considered view that no litigant should be put to any inconvenience and / or denied the right to approach the court and his application being not considered on merits merely on the ground of erroneous Office note.

7 To put the aforesaid facts simply, the court proceeded on the basis of an earlier Office note which did not disclose any delay in filing the appeal. The said Office note was sought to be corrected on the basis of praecipe submitted by respondent nos.5 and 6 and in terms of the corrected Office note, a delay of 64 days was indicated and pursuant to the subsequent Office note, the present application for condonation of delay came to be filed.

8 After hearing the learned counsel for the respective parties and for the reasons, as noted hereinabove, we are of the considered view that this is a fit case where the delay of 64 days has been adequately explained and consequently, the following order :

ORDER

Criminal Application No.1040 of 2019 for condonation of delay is allowed for the reasons noted hereinabove.

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9 Since the delay has now been condoned, we, therefore, pass fresh order of admitting the appeal and since parties have already filed their respective affidavits in response, on merits of the claim, the matter stands adjourned to **21st August 2019.**

10 Affidavit reply filed by respondent no.6 be served on the counsel for the appellant and other respondents in the course of the day.

11 Liberty is granted to respondent no.6 to file the said reply before the Registry.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)