

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application No. 591 of 2019

Javed Sheikh s/o Rafia Sheikh Qureshi
..Vs..
Ramesh Arunrao Rode & Another

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*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

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Court's or Judge's Orders

*Shri Jayesh Ujaware, Advocate h/f Shri Deol Pathak,
 Advocate for the Applicant.
 Shri M.V. Rai, Advocate for Non-applicant No.1.
 Shri Sagar Ashirgade, A.P.P. for Non-applicant No.2.*

CORAM : S.M. MODAK, J.
DATE : 11th DECEMBER, 2019.

The complaint of the appellant was dismissed by the Judicial Magistrate First Class, Bhandara on 5th July, 2018 for not giving evidence. Instead of filing an appeal to this Court, the complainant under wrong belief approached the Sessions Court, Bhandara by way of Criminal Appeal No. 77 of 2018. The appeal was dismissed on 9th April, 2019 for the reason that it is not maintainable as per proviso to Section 372 of the Code of Criminal Procedure. The learned Judge observed that it is maintainable as per sub-section 4 of Section 378 of the Code of Criminal Procedure. That is why, the complainant says that there is delay of 47 days in preferring an appeal.

The respondent No.1 through his learned Advocate Shri Mahesh Vasant Rai seeks time to file reply. Even if the

reply is filed, the record cannot be disputed. Copy of Sessions Court Judgment in criminal appeal is filed. The respondent can be awarded cost, so request for time to file reply is not accepted. The complainant has satisfied about the sufficient cause. Hence the following order:-

O R D E R

- i. The application is allowed.
- ii. Delay of 47 days is condoned subject to payment of costs of Rs. 1,000/- (rupees one thousand only) to be paid to respondent.
- iii. The criminal appeal be registered.
- iv. The criminal appeal be placed before the Court for granting of leave on 16th January, 2020.
- v. The respondent waives notice.
- vi. The Respondent be supplied copy of memo of appeal and other documents.
- vii. The applicant to remove the office objections prior to 16th January, 2020 in case of his failure, he is liable to pay costs of Rs. 500/- (rupees five hundred only).

Stand over to 16th January, 2020.

JUDGE