

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

CRIMINAL WRIT PETITION NO.667 OF 2019

1. Sayyad Azim Sayyad Mnazur
Age: 35 years, Occ. Labour,
R/o:- Sayyad Nagar, Pangri Road,
Tq. And Dist. Beed
2. Sayyad Manjur s/o Sayyad Ahmed
Age: 65 years, Occu:- Pensioner,
R/o:- Sayyad Nagar, Pangri Road,
Tq. And Dist. Beed
3. Sayyad Simanuyah w/o Sayyad Manjur
Age: 60 Years, Occu:-Housewife
R/o: Sayyad Nagar, Pangri Road,
Tq. And Dist. Beed.
4. Sayyad Aayesha d/o Sayyad Manjur
Age: 29 Years, Occu:- Service,
R/o:- Sayyad Nagar, Pangri Road,
Tq. And Dist. Beed.

... PETITIONERS

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Station, Shivaji Nagar,
Tq. & Dist. Beed.

... RESPONDENT

.....
Mr. P. D. Suryawanshi, Advocate for petitioners.
Mr. P. K. Lakhotia, APP for respondent-State.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

JUDGMENT RESERVED ON : 17th February, 2020.

JUDGMENT PRONOUNCED ON : 11th March, 2020.

JUDGMENT :

. Rule. Rule is made returnable forthwith. Heard learned Advocate Mr. P. D. Suryawanshi for petitioners and learned APP Mr. P. K. Lakhota for respondent-State, for final disposal of the petition with their consent.

2. Present writ petition has been filed invoking the constitutional powers of this Court under Articles 226 and 227 of the Constitution of India challenging the order passed in Miscellaneous Criminal Application No.8 of 2019 by learned Sessions Judge, Beed on 18-03-2019 thereby condoning the delay of 15 months and 8 days caused in preferring the appeal by the State .

3. Present petitioners are the original accused persons who had faced trial in R.C.C. No.554 of 2014 before the learned Judicial Magistrate First Class, Court No.3, Beed for the offences punishable under Sections 498(A), 323, 504 and 506 read with Section 34 of Indian Penal Code. They were acquitted by the judgment and order dated 03-07-2017.

4. Present respondent-prosecution filed Miscellaneous Criminal Application No.8 of 2019 under Section 5 of the Limitation Act for condonation of delay. It was stated that after the judgment, the Police Prosecutor, Beed filed appeal proposal to the District Magistrate, Beed vide office letter dated 24-08-2017. However, the District Magistrate, Beed informed to the office of the

public prosecutor, Beed vide letter dated 27-09-2017, received by office on 05-10-2017 granting sanction. It is stated that there is delay of 15 months and 8 days. It is stated that the respondent - prosecution has strong hopes of success in the appeal. The delay was not intentional, but it was due to the official correspondence and over burden of work.

5. Say was filed by the present petitioners stating that intentionally the date of pronouncement of the judgment has not been mentioned in the application. Actual delay is of 525 days. No reasonable ground has been shown for condoning the delay.

6. After hearing both sides, the learned Sessions Judge, by relying on the decision in **Lanka Venkteswarlu (D) By L.Rs. Vs. State of A. P and others, [(2011) AIR (SC) 1199]** held that the delay has been properly explained by the State and then condoned the delay. Hence, the present writ petition.

7. It has been vehemently submitted on behalf of the petitioners that the learned Sessions Judge did not consider what was the exact reason for the delay. Pressure of work or delay in official correspondence cannot be taken as a reasonable ground to condone the delay. Reliance has been placed on the decision in **State of Maharashtra Vs. Bharat and others [2018 (2) AIR BOM. R 94]**, wherein this Court observed that “the reason given for delay caused in taking

sanction/approval at different levels to file the appeal is not sufficient to condone the delay.” Further, reliance has been placed on the decision in **State of Maharashtra Vs. Maruti Anand Yadav [1980 Cri. L.R. (Bom.) 200]**, wherein similar view was taken.

8. Pet contra, learned APP submitted that the learned Sessions judge has rightly stated that the delay has been properly explained by the State. Because of the work in the District Magistrate’s office, the order was not prepared and received by the prosecution department in time. The delay has been rightly condoned.

9. The first and the foremost fact that is required to be noted is that the learned Judicial Magistrate First Class had pronounced the judgment on 03-07-2017. As per the application, the proposal to file appeal was submitted by the Police Prosecutor’s office on 24-08-2017 to the District Magistrate, Beed. The proposal/approval to file the appeal was received from the District Magistrate’s office to the Public Prosecutor’s office on 05-10-2017. However, the appeal along with application has been filed on 14-01-2019. It cannot be stated that after receipt of the approval order from District Magistrate’s office to the Public Prosecutor’s office anything remained with the District Magistrate to be done. It was for the Public Prosecutor’s office to take further action of preparing memo of the appeal and submit the same to the Appellate Court. There is absolutely no

explanation by the Public Prosecutor's office as to why the delay was caused at their end. No communication was required to be made by the Public Prosecutor after the letter dated 27-09-2017 was received by him from District Magistrate, Beed. Over burdening of work at the Public Prosecutor's office cannot be a ground to condone the delay. If such grounds are to be accepted, then every department of the Government or even prosecution would start saying so, seeking concession from even approaching to the Courts in time. Hence, it is reiterated that Public Prosecutor and his office along with the additional Public Prosecutors cannot take a stand that they are overburdened with the work. The learned Sessions Judge erred in not considering the fact that there is absolutely no reason given for the period from 06-10-2017 to 14-01-2019 by the Public Prosecutor's office at Beed. The delay appears to have been mechanically condoned by the learned Sessions Judge. The ratio laid down in the decisions relied by the learned Advocate for the petitioners definitely applies here. Further, in **State of Maharashtra and others Vs. Bharat and others** (Supra), various decisions of this Court as well as Hon'ble Apex Court were considered and the above said decision has been arrived at. The decision by the Division Bench of this Court in **State of Maharashtra and others Vs. Vithu Kalya Govari**, [2008 (6) Mh.L.J. 239] is important from the point of view of the present case, wherein it has been observed that "the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or

“approval at different levels” is hardly sufficient to justify condonation of delay of about two years.” When the learned Sessions Judge erred in exercising the discretion which, in fact, ought to have been exercised in a judicious manner, then definitely case is made out for invoking the constitutional powers of this Court under Articles 226 and 227 of the Constitution of India in favour of the petitioners. When the remedy open to the prosecution had become time barred and no proper explanation was given by the prosecution to file an appeal even after the appeal period was over, a vital right arose in favour of the petitioners to protect their acquittal by a competent Court and therefore, this Court is inclined to exercise its constitutional powers in favour of the petitioners. Hence, the following order :-

ORDER

- (i) Writ petition stands allowed.
- (ii) The order dated 18-03-2019 passed by the learned Sessions Judge, Beed in Miscellaneous Criminal Application No.8 of 2019 is hereby quashed and set aside. The said application stands dismissed.
- (iii) Rule is made absolute in the above terms.

[SMT. VIBHA KANKANWADI, J.]