

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

CRIMINAL APPA NO. 381 OF 2020

M/s Taori Marketing Partnership Firm, thr. Its Partner

..vs..

Vilas D. Nikose

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.S. Sharma, Advocate for appellant.
Shri N.R. Ambilwade, Advocate for respondent.

CORAM : VINAY JOSHI, J.
DATED : 15/12/2020

Heard.

2. The appellant is seeking for condonation of delay of 40 days caused in filing Criminal Appeal to challenge the order of acquittal. It is contended that the Trial Court has delivered the judgment of acquittal on 16.03.2020 of which he came to know on 21.03.2020. It is urged that since there was complete lock-down due to current pandemic situation, the appellant was unable to apply for certified copies and to take further steps to file appeal.

3. The other side resisted this application by stating that the reason for delay is not appropriate. He would submit that the Supreme Court in reported judgment in case of *H. Dohil Constructions Co.(P) Ltd. Vs. Nahar Exports Ltd. And anr. reported in (2015) 1 SCC 680* has not consider it appropriate to condone the delay of 9 days for want of sufficient reason. On perusal of entire judgment it reveals that the facts are otherwise than what has been argued. In said case, appeal was filed after delay

of 9 days without payment of court fee. Hence, papers were returned to the appellant for rectification and re-filing of the appeal which was re-filed after delay of about five years. In that context, the Supreme Court found that there were lack of *bona fides*, hence delay was refused to be condoned. The facts being totally different, it would not assist the respondent in any manner.

4. Time and again, the Supreme Court took a view that the applications for condonation of delay requires liberal construction so as to advance the cause of justice. There is no presumption that the delay is intentional or deliberate. The Court can take judicial note that in present time, the entire world is facing pandemic situation due to COVID-19 virus. Undeniably from the month of March, 2020 lock-down has been imposed as precautionary measure. In the light of the said scenario, if the reason for delay is tested it cannot be doubted at all. Moreover, the delay is running into 40 days only.

5. Having regard to all these facts, the reason canvassed by the appellant is sufficient to explain the delay, hence, the application deserves to be allowed and accordingly allowed. The delay caused in filing appeal stands condoned and Criminal Application is disposed of accordingly. Appeal be registered.

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Issue notice to the respondent, on the point of grant of leave, returnable after four weeks.

JUDGE