

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

CRIMINAL APPLICATION (APPA) NO. 515/2019 IN
CRIMINAL APPEAL NO. _____/2020

Arun Pandurang Balpande

-VERSUS-

Kashinath Sitaram Gakre & ors.

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

Court's or Judge's Orders

Shri R. M. Patwardhan, Advocate for applicant/Appellant.
Shri N. Gurnani, Advocate h/f Shri A. Dhore, Advocate for
respondent Nos. 1 to 4.
Shri S. D. Shirpurkar, Advocate for respondent No. 5.

CORAM : VINAY JOSHI, J.

DATE : 10.12. 2020.

This is an application for condonation of delay of 243 days caused in filing appeal challenging the order of acquittal passed in Special (MSEB) case No. 12/2013. It is appellant's stand that it was a State case in which the appellant i.e. informant was called at the time of evidence. He was not aware regarding the progress of trial and resultant acquittal. After knowing about the acquittal, he has immediately approached to this Court and therefore, seeks condonation of delay. The respondents have resisted this application by stating that the appellant has not disclosed the source

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as to when and from whom he learnt about the disposal of criminal case. It is contended that the delay is deliberate and therefore, does not deserve for condonation.

2. At the instance of report lodged by the appellant investigation commenced and accordingly, State has filed a criminal case which resulted into acquittal. Apparently, it was not a private complaint. The State has not approached for challenging the order of conviction. In short, this is an appeal of victim as defined under Section 2(wa) of the Code of Criminal Procedure in terms of proviso added to Section 372 of the Code of Criminal Procedure. No limitation has been prescribed in the Code for such appeal. Other side is unable to show any provision regarding the limitation stipulating for such appeal. However, whenever limitation has not prescribed, it is settled law that within reasonable time, the appeal has to be preferred. Undeniably, the appellant was summoned for leading evidence in trial and therefore, he had no occasion to know the progress of case. In the circumstances, the reason canvased that he was not aware about the decision can be accepted since the

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contrary has not been pointed out. In view of that delay stands condoned appeal be registered and numbered accordingly.

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3. The appellant is seeking leave to file appeal to challenge the order of acquittal. The Hon'ble Supreme Court in Case of *Mallikarjun Kodagali (dead) represent through legal representatives Vs. State of Karnataka and ors., AIR 2018 SC 5206*, by majority has expressed that for such appeal, leave of Court is not required.

4. Issue notice on admission.

5. Learned counsel for respondent Nos. 1 to 4 and learned Additional Public Prosecutor waive service for notice on the point of admission.

6. The appellant is directed to supply copy of necessary papers to other side.

7. Put up this matter after four weeks.

JUDGE