

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

CRIMINAL APPLICATION (APPA) NO. 814 OF 2019
IN CRIMINAL APPEAL NO. OF 2020

(State of Maharashtra thr. PSO, Yavatmal (City) vs. Juber Khan Nasir Khan)

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

Court's or Judge's orders.

Mrs. M.H. Deshmukh APP for the appellant – State.
Shri N.D. Thombre, Advocate for the respondent.

.....

CORAM : PUSHPA V. GANEDIWALA, J.
FEBRUARY 26, 2020.

Heard Mrs. M.H. Deshmukh, learned APP
for the appellant – State and Shri N.D. Thombre,
learned counsel for the respondent.

This is an application for condonation of
delay of 386 days caused in preferring an Appeal
under Section 378(3) of the Criminal Procedure
Code.

It is submitted that the accused – non-
applicant – Juber Khan Nasir Khan was tried for the
offence punishable under Sections 7, 13(1)(d) read
with Section 13(2) of the Prevention of Corruption
Act, 1988, and came to be acquitted by the judgment
and order dated 27.04.2018. The reasons for delay
stated in the application are as under :

(i) *The file was allotted to Mrs. G.R. Tiwari,*

APP for drafting the application for Leave to file appeal on 14.08.2018. The file was misplaced as the same was mixed with other files and thereafter it was not traceable.

(ii) The officer of the concerned department has not come for discussion during this intervening period nor enquired with the office of the Government Pleader in respect of filing of leave to file appeal.

(iii) Due to change in roster and other office renovation work that was carried out in the office of the Government Pleader, it was not noticed for considerable period.

(iv) On 09.08.2019, after a hard search, both the files were traced and thereafter immediately the appeal was preferred.

The learned counsel for the accused/ non-applicant strongly opposed the application and submitted that the applicant – State itself admit the casual and lethargic approach in dealing with the matter.

I have considered the submissions on behalf of both sides.

At the outset, it is well settled that liberal approach of the court is required for condoning delay. At the same time, in case of acquittal wherein the accused after suffering a rigmarole of trial gets

acquittal and on one fine morning, after a delay of about more than one year, if he receives a notice that appeal is filed against the order of acquittal and again he has to face proceedings with regard to his charge for the offence, in such case delay needs to be explained satisfactorily with plausible explanation.

The reasons as stated in the application, prima facie, show casual and unconcerned approach on the part of prosecution to deal with the file and to take appropriate steps considering the nature of the case.

The nature of approach of the court shall depend on the nature of effect of its order for condoning delay.

Delay in filing the Appeal against conviction is viewed liberally, however, the same view shall not be taken if the long delay is caused in filing Appeal against acquittal that too due to casual approach adopted in the office of the Government Pleader.

This is a fit case for not allowing the application for condonation of delay.

In this view of the matter, criminal application needs to be rejected and the same is accordingly rejected.

JUDGE

*GS.