

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

CRIMINAL REVISION APPLICATION NO. 110 OF 2020

Yogesh Prabhakar Chaudhary,
Age 35 years, Occ. Business,
R/o. Gawaliwadi, Taloda,
Tq. Taloda, Dist. Nandurbar. ... **Applicant.**

VERSUS

The State of Maharashtra,
Through L.C.B. Nandurbar. ... **Respondent.**

...

Advocate for the Applicant : Mr. Salave Amit S.
APP for the Respondent/State : Mr. S.W. Mundhe.

CORAM : **MANGESH S. PATIL, J.**
DATE : **23.02.2021.**

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. The revision is preferred by the applicant being aggrieved and dissatisfied by the order passed by the learned Additional Sessions Judge refusing to condone the delay of 100 days occasioned in preferring an appeal under Section 373 of the Code of Criminal Procedure challenging the notice and the subsequent furnishing of surety for keeping peace and good behaviour.

3. *Ex facie*, it appears that the applicant was issued with a notice under Section 111 of the Code of Criminal Procedure. After he appeared and expressed his readiness to furnish surety and execute bond it was accepted and the impugned order was passed purportedly under Section 117 of the Code of Criminal Procedure.

4. Though it is a Chapter case the legislature has also kept open remedy of challenging it by providing a statutory right to the applicant. It stands robbed off by the impugned order whereby the learned Additional Sessions Judge has refused to condone the delay of 100 days in preferring the appeal.

5. Going by the manner of reasoning in the impugned order, the learned Additional Sessions Judge seems to have taken a hyper technical view. The reasoning is more suited to the decision of the appeal rather than deciding an application for condonation of delay. The merit or otherwise of the appeal need not influence the discretion of the Judge while deciding the application for condonation of delay but that seems to be the case in the matter in hand.

6. It is trite that it is always appropriate to allow the matters to be decided on merits rather than by default. It is in view of such state of affairs, the impugned order is liable to be quashed and set aside by imposing some costs on the applicant.

7. The Revision is allowed. Impugned order is quashed and set aside subject to the applicant depositing costs of Rs. 1000/- (Rs. One Thousand only) in the concerned Court. On such costs being deposited within a period of four weeks from today the delay would stand condoned.

8. The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd/-