

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

CRIMINAL APPLICATION NO. 2829 OF 2019

MOHAMMAD SHAFIYODDIN MOHAMMAD SHAMIYODDIN
VERSUS
NASIM BANO MOHAMMAD ALI CHAUS AND ANR

...

Advocate for Applicant : Mr. Joshi Rahul G.

Advocate for Respondent Nos. 1 And 2 : Mr. Saeed S. Shaikh

...

CORAM : KISHORE C. SANT, J.

DATE : 20th OCTOBER 2022.

Per Court :

Heard.

1. Learned Advocate for the Applicant submits that under the bona fide belief, the Applicant had preferred an appeal before the Sessions Court, challenging the judgment and order dated 08.11.2016 passed by the learned 7th Judicial Magistrate First Class, Aurangabad, where the Respondents are acquitted. The learned Sessions Judge by judgment and order dated 12.06.2019 was pleased to hold that as the complaint

was a private complaint, Appeal is not maintainable before the Sessions Court. Learned Advocate further submits that it is because of the bona fide belief that the appeal was preferred before the learned Sessions Court. It is realized after the dismissal of the appeal that appeal is maintainable before this Court. Therefore, delay is caused of 950 days. Hence the same deserves to be condoned.

2. Learned Advocate for the Respondents strongly opposed the application stating that this is not sufficient reason to condone the delay. The Applicant should have been vigilant and should have diligently prosecuted the proper remedy. There is already an acquittal in favour of the Respondents. If the delay is condoned, he will be put to harassment.

3. At this stage, this Court has to consider only the reason for delay that is caused in filing the appeal. After perusal of submission and record, this Court of the opinion that this is a fit case to condone the delay. Hence the delay is condoned. Office is directed to register the appeal (ALP) and place it after Diwali Vacation.

4. The Criminal Application is allowed subject to cost of Rs.5000/- to be paid to the Respondents.
5. The Criminal Application is disposed off accordingly.

[KISHORE C. SANT, J.]

Najeeb.