

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO.102 OF 2022

M/s. Jitendra Brothers and Ors. ...Applicants
Versus
V. B. Abhichandani and Anr. ...Respondents

Mr. Ramgopal S. Tripathi, for the Applicants.

Ms. Mamta Omle, for the Respondent No.1.

Ms. P. P. Shinde, A.P.P for the Respondent No.2– State.

***CORAM : REVATI MOHITE DERE, J.
DATE : 28th FEBRUARY 2022***

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Ms. Omle waives service on behalf of respondent No.1. Learned APP waives service on behalf of respondent No.2- State.
3. By this application, the applicants have impugned the order dated 3rd January 2022, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, below Miscellaneous

Application No.1001 of 2019, by which the learned Judge rejected the said application seeking condonation of delay of about 27 – 30 days.

4. Perused the papers. The applicants i.e. accused Nos.1 and 3 were convicted for the offence punishable under Sections 276C(1), 277(2) r/w 278 B of the Income Tax Act by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in C.C. No.3804022/SW/2013 and sentenced to suffer rigorous imprisonment for three months alongwith fine by the trial Court vide Judgment and Order dated 13th February 2019. The applicants being aggrieved by the said Judgment and Order of conviction and sentence preferred an appeal in the Court of the learned Sessions Judge, Greater Bombay, alongwith an application being Miscellaneous Application No.1001 of 2019 for condonation of delay of 27 – 30 days in filing the said appeal. Vide the order dated 3rd May 2019, the learned Sessions Judge stayed/suspended the sentence of the applicants and continued the bail as granted by the trial Court. Thereafter, the said Miscellaneous Application seeking condonation of delay of 27 – 30 days was heard by the learned Sessions Judge and after hearing the parties, was rejected vide order dated 3rd January 2022.

5. Learned Counsel for the applicants submits that the applicants have set out reasons and given sufficient cause for condoning the delay in filing the appeal. He submits that the learned Judge rejected the said application seeking condonation of delay on the ground that certain medical certificates were not produced by the applicants. Learned Counsel has to the aforesaid application annexed certain medical documents, albeit not for the period during the delay but post the delay. Learned counsel for the applicants states that no prejudice will be caused to the respondent No.1, if the delay is condoned, inasmuch as, the applicants have a good case on merits and that their statutory appeal be heard on merits.

6. Learned Counsel for the respondent No.1 opposes the application. She submits that no interference is warranted in the impugned order as no medical documents were filed by the applicant No.3 in support of his health.

7. From the perusal of the application, it appears that the applicant – Jayesh Shah, has stated in the application that he received a copy of the Judgment and Order dated 13th February 2019, however he

could not file the appeal within 30 days due to his ill-health, tension and mental pressure. It is also stated that he could not contact his lawyer to give instructions and as such there was bonafide delay of 27 – 30 days. He has further stated in para 2 of the said application that he has undergone heart surgery in 1999 and since then is continuously sick and bed-ridden and is also suffering from diabetes and high blood pressure and as such is unable to move out of the house and do normal things. In para 3 of the application, it is stated that after hearing the Judgment of the case, the applicant – Jayesh Shah suffered depression and that he had blood pressure issues and therefore was at home. The delay of 27 – 30 days is not such that the explanation offered by the applicant – Jayesh Shah cannot be accepted. The said applicant has also annexed medical certificates of the period December 2018, January 2019 and so on, in support thereof to show that he was suffering from certain ailments.

8. Considering the aforesaid, the learned Appellate Court ought to have allowed the applicants application seeking condonation of delay and heard the applicants appeal on merits.

9. Accordingly, the impugned the order dated 3rd January 2022, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, below Miscellaneous Application No.1001 of 2019, is quashed and set aside and delay of 27 – 30 days caused in filing the appeal is condoned. Registry to number the Criminal Appeal at the earliest and the learned Judge to thereafter proceed with the hearing of the Appeal, on its own merits, in accordance with law.

10. The Application is allowed. Rule is made absolute in the aforesaid terms.

11. Needless to state, that the suspension of the sentence and the bail granted by the Appellate Court, to continue till the Appeal is finally decided.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.