

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.355 OF 2022
IN
CRIMINAL APPEAL (ST.) NO.1157 OF 2022

Satish Mahipal Walmiki @ Raja Arun ... Applicant
Shettiyar @ Pahilwan

V/s.

The State of Maharashtra ... Respondent

Mr. Advait M. Sethna, Appointed Advocate a/w Mr. Tanay M. Mandot,
Mr. Rangan Majumdar, Mr. Sandeep Raman and Mr. Eshaan Saroop,
for the Applicant.

Mr. A.A. Palkar, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 25th FEBRUARY 2022.

PC. :

1. This is an application seeking condonation of delay of 11 years and 202 days in preferring Criminal Appeal challenging the judgment and order dated 29th April 2010 passed by the Additional Sessions Judge, Greater Bombay in Sessions Case No.116 of 2009.

2. The learned counsel Mr. Sethna is appointed through Legal Aid on 14th July 2021 to espouse the cause of the appellant in jail. Mr. Sethna had to obtain the affirmation of the applicant from the jail and

therefore, time was consumed to file the present application seeking condonation of delay. In fact, it is not necessary to seek affirmation of prisoner in jail in order to file any application or appeal.

3. Rule 12 (i) and (ii) of Chapter IV of the Bombay High Court Appellate Side Rules, 1960 read as under : -

“12. (i) Accompaniments to memorandum of appeal: Every memorandum of appeal shall be accompanied by a certified copy of the judgment (or order) under appeal, together with one typed copy of the judgment or order in the case of a single Judge matter and two typed copies of the judgment or order in the case of a Division Bench matter.

The Office may, however, accept the memorandum of appeal without such typed copy or copies, as the case may be, provided the Advocate for the appellant gives an undertaking to file the same if the appeal is required to be placed before the Court for orders before the prints are received.

(ii) Accompaniments to memorandum of appeal in appeals from appellate decrees. — In the case of appeals from appellate decrees, the memorandum of appeal shall also be accompanied by the certified copy of the judgment (or order) of the trial Court and of the grounds of appeal and cross-objections, if any, in the lower appellate Court, together with one typed copy of each of the same.

The Office may, however, accept the memorandum of appeal without such typed copy, provided the Advocate for the appellant gives an undertaking to file the same if the appeal is required to be placed before the Court for orders before the prints are received.”

3. Rule 1 of Chapter XXVI of the Bombay High Court Appellate Side Rules deals with Criminal Business which reads as under :-

“1. Rules re: Civil proceedings to apply *mutatis mutandis* to criminal proceedings.

The rules applicable to civil proceedings shall, except as otherwise provided in this Chapter, apply *mutatis mutandis* to criminal proceedings.”

4. Rule 13 of Chapter XXVI of the Bombay High Court

Appellate Side Rules reads as under :-

“13. Accompaniments to appeals and applications, — Every appeal and application shall be accompanied by the certified copy of the judgment or order appealed or applied against, including where an application is against the appellate or revisional order of the Sessions Judge, by the certified copy of the judgment of the trial Court. When the order complained of is that of a Sessions Court having jurisdiction over more than one revenue district, the memorandum of the proceeding shall show the revenue district in which the memorandum of the proceeding shall show the revenue district in which the original proceeding was instituted.”

5. Rule 25 of Chapter XXVI of the Bombay High Court

Appellate Side Rules reads as under:-

“25. Accompaniments to jail appeals and applications. -

(i) All appeal and applications received from jail shall be accompanied by a copy of the register of petition duly filed in by the Jail Superintendent and certified copies of the Judgments and orders as prescribed for appeals and revisions under those rules.

(ii) No additional copies for the use of the Court or Division Bench shall be required to be supplied by the appellant or applicant from jail.

(iii) If the memorandum of appeal or petition is not in English, it shall be translated in the Translators’ Office. Four

typed copies of the translations shall be prepared in that Office:

Provided that such translations would not be necessary if the documents are in Marathi and if the party or the Advocate undertakes that English translations would be supplied whenever an order in that respect is made by the Court in a particular proceeding.”

6. Rule 26 of Chapter XXVI of the Bombay High Court Appellate Side Rules reads as under:-

“26. Procedure for transfer applications. — An application for transfer of a criminal case shall, as soon as it is presented, be placed before the Court for rule subject to office objections, if any. The party or his Advocate shall remove all office objections within a week from the date of the said office objections being notified on the Notice Board. If the party or his Advocate fails to remove the said office objections within the said time, the matter shall be placed before the Court which may in its discretion dismiss it for want of prosecution.”

7. In view of this, it would not be necessary to seek affirmation of the convicts preferring a statutory appeal in the High Court neither an affidavit would be necessary for filing the application either for seeking condonation of delay or for seeking suspension of substantive sentence.

8. Be that as it may, in the present case, it is a statutory appeal and hence, the accused/ convict deserves right to challenge the judgment and order by which he is convicted for offence punishable

under section 302 of the Indian Penal Code. Hence, the delay of 11 years 202 days is hereby condoned in the interest of justice. Application for condonation of delay is disposed of.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)