

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

CRIMINAL APPEAL NO. 792 OF 2019

Suraj Ravindra Birje	...Appellant
Versus	
The State Of Maharashtra And Anr	...Respondent

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Mr. Amit S. Kate, Advocate for the Appellant.

Ms. Swati D. Sawant, Advocate for the Respondent No.2.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM	:	PRAKASH D. NAIK, J.
DATE	:	21st APRIL, 2022.

PER COURT:

1. This appeal has been preferred under Section 372 of Code of Criminal Procedure (for short “Cr.P.C.”) challenging the judgment and order dated 5th October, 2018 passed by learned J.M.F.C. Rajapur, Dist. Ratnagiri whereby the respondent No.2 was acquitted for offences punishable under Sections 279, 337, 338 of Indian Penal Code (for short “IPC”) and Section 184, 3(1) along with Section 181 of Motor Vehicles Act, 1988.

2. Section 372 of Cr.P.C. provides that the victim shall have right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the

Court to which an appeal ordinarily lies against the order of conviction of such Court. The victim/appellant herein has challenged the judgment and order passed by the learned J.M.F.C. acquitting the accused for the aforesaid offences. In the event, the accused were convicted for the said offence, the appeal would have lied before the Court of Sessions. In these circumstances, the appellant is required to prefer an appeal before the Court of Sessions.

3. Learned Advocate for the appellant submits that the appellant may be permitted to withdraw this appeal with liberty to prefer appeal before the appropriate Court in accordance with Section 372 of Cr.P.C. It is submitted that, the concerned Court be directed to condone delay, considering the fact that proposal was forwarded by office of Assistant Public Prosecutor, Rajapur and the said proposal was rejected and also taking into consideration the fact that this appeal was pending in this Court since November-2019.

4. In view of the submissions, Criminal Appeal No.792 of 2019 is allowed to be withdrawn with liberty to prefer an appeal challenging impugned Judgment and order dated 5th October, 2018 before the Sessions Court.

5. In the event, issue relating to the condonation of delay and latches arises in preferring appeal before Sessions Court the fact that office of prosecutor had forwarded the proposal to Law and Judiciary Department for preferring an appeal against judgment of acquittal by the office of the Assistant Director, Ratnagiri, the time consumed in deciding proposal which has been rejected and pendency of appeal before this Court from the date of its filing be considered by appropriate Court.

6. Criminal Appeal No.792 of 2019 is disposed off.

(PRAKASH D. NAIK, J.)