

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 423 OF 2022.

Santosh Ramjeevan Dubey,
Aged about 56 years, Occupation
Business, resident of Jai Nagar,
Near MIDC, Amravati,
District Amravati.

... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
Home Department, Mantralaya,
Mumbai.

2.Anil Gulabchand Bhamore,
Aged about 54 years, Occupation
Business, resident of Pannalal
Nagar, Amravati, District Amravati.

... **RESPONDENTS.**

Mr. V.A. Kothale, Advocate h/f. Shri Y.P. Kaslikar, Advocate
for the Petitioner.

Mr.H.D. Dubey, A.P.P. for Respondent No.1.
Respondent No.2 - Served.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 30, 2002.

ORAL JUDGMENT :

Respondent No.2/original complainant though served, choose to remain absent. Considering the controversy involved, heard learned Counsel for the Petitioner and learned A.P.P. for Respondent no.1 – State finally by issuing Rule making the same returnable forthwith.

2. The petitioner was an accused in R.C.C.No.534/2007. The Trial Court after a full fledged trial has acquitted the petitioner vide judgment and order dated 31.01.2018. Being aggrieved and dissatisfied by the judgment and order of acquittal, respondent no.2 who is informant, has filed an appeal along with an application for condonation of delay, seeking to condone delay of 1138 days. The learned Sessions Court has condoned the delay subject to payment of cost, which order is impugned herein.

3. The petitioner has been acquitted on merits, meaning thereby a valuable right has been accrued in his favour. No doubt, the informant has a right to challenge the order of acquittal in

3

appeal, however, subject to the period of limitation or on sufficient cause for the delay, if any. Respondent no.2 has not filed the appeal against acquittal within the stipulated period, but, has come to the Court after a long delay of 1138 days. Since the delay runs into years, it is necessary to examine whether the respondent has made out sufficient cause to condone the delay.

4. The reason assigned for delay is that the respondent being a layman, was not aware of the order of acquittal and therefore, the delay. Thus, without specifying the peculiar cause, entire delay which runs into more than 3 years, is tried to be patched up by merely saying that he was unaware of the judgment of acquittal. Record indicates that during the course of trial, the respondent [informant] has engaged an Advocate to assist the prosecution which itself indicates that he was vigilant as he was represented by a private Advocate. In the circumstances, the cause canvassed for delay would not justify the delay at all.

5. Having regard to the said fact, in absence of sufficient

4

cause, long delay in filing an appeal against acquittal cannot be condoned. In view of that, Criminal Writ Petition is allowed, the impugned order dated 28.01.2022, passed by the Sessions Court in M.C.A.No.30/2021 is hereby quashed and set aside. The application for condonation of delay is rejected, consequently the appeal stands disposed.

6. Rule is made absolute in aforesaid terms, with no order as to cost.

JUDGE