

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

966 CRIMINAL WRIT PETITION NO.159 OF 2023

GANESH TUKARAM MORE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr.Kishor M. Gadve Patil

APP for Respondents-State : Mr.S.D.Ghayal

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 12 April 2023

PER COURT :-

1. Heard both the sides.

2. The petitioner is challenging the order of the trial Court whereby, in exercise of the powers under Sections 473 of the Code of Criminal Procedure (Cr.P.C.), it has condoned the delay of 14 years in filing the charge-sheet.

3. We had instructed the learned APP to get the information as to if any opportunity of being heard was extended to the petitioner before the Magistrate passed the order under Section 473 of the Cr.P.C.

4. The learned APP fairly concedes that no such opportunity was extended.

5. The order passed in Crime No.78 of 2008, registered with Varangaon Police Station, by the learned Judicial Magistrate First Class (Court No.1), Bhusawal dated 01-12-2022 in purported

exercise of powers under Section 473 of the Cr.P.C. in condoning the delay does not expressly mention about any notice having been issued to the petitioner.

6. In ***P.K.Choudhury v. Commander, 48 BRTF (GREF); (2008) 13 Supreme Court Cases 229***, it has been expressly laid down that passing an order under Section 473 of the Cr.P.C. in violation of principles of natural justice would go to the root of the order.

7. Obviously, if delay in filing the charge-sheet was to be condoned, it could not have happened in a lopsided manner. By lapse of time, a right which had accrued in the petitioner is being taken away without extending any opportunity to him to contest the prayer for condoning the delay. The order is illegal.

8. Criminal writ petition is allowed. The order passed by the Judicial Magistrate First Class (Court No.1), Bhusawal on 01-12-2022 under Section 473 of the Cr.P.C. is quashed and set aside. The Magistrate shall issue a notice to the petitioner, extending him an opportunity to be heard and then may pass appropriate order afresh in accordance with law.

(**ABHAY S. WAGHWASE**)
JUDGE

(**MANGESH S. PATIL**)
JUDGE