

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

**37 CRIMINAL APPLICATION NO.643 OF 2023
IN APEAL/1198/2019 WITH APEAL/1198/2019**

**VAISHALI D/O. VIJAY KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Amol Shivajirao Sawant, Advocate for the applicant
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 10th APRIL, 2023

P. C.

1. This is an application for condonation of delay of 2 years 125 days from the date of judgment impugned in the criminal appeal No. 1198/2019 and 143 days from the date of knowledge. It is case of the applicant that she has lodged FIR with the police station against the respondents for the offences punishable under Sections 323, 354, 504, 506, 427 read with Section 34 of the Indian Penal Code.

2. After investigation police filed charge-sheet and case was lodged in the court of learned JMFC, Rahata. Learned JMFC

found accused Nos. 1 and 2 guilty for the offences punishable under Sections 354, 323, 504, 506 and 427 read with Section 34 of the Indian Penal Code. Against said judgment the respondents preferred a criminal appeal No.2/2015. Both the respondents came to be acquitted by the judgment dated 26-07-2017 by the learned Additional Sessions Judge, Koparagaon. It is this judgment which is under challenge.

3. The applicant states that as her husband is in service and she is required to move alongwith the husband wherever he is transferred, she could not get the knowledge of the acquittal. She got the knowledge of the acquittal only when she received notice issued by the advocate to her on behalf of the respondents seeking compensation for filing malicious complaint. Said notice was sent on 07-06-2019 which she received on 11-06-2019. Only thereafter, she got the knowledge of the acquittal and she felt it necessary to challenge the judgment of the Additional Sessions Judge. Further delay is caused for the reasons that some time was taken in preferring

the application contacting the advocate and as such the delay is not deliberate. But it is caused because of reasons stated above.

4. Learned advocate for the respondents vehemently opposes the application. He submits that in fact the applicant knows everything. The sister of applicant is neighbor of respondents and therefore she has every knowledge of the acquittal. However, only because now a notice seeking compensation is sent to her, she has filed this appeal only to harass the respondents original accused persons.

5. Considering the above submission it is clear that a notice was sent by the respondents alongwith other original accused persons for compensation and it is only thereafter she got knowledge. There is nothing to indicate that she had prior knowledge of the judgment under challenge. Considering this, this court finds that a case is made out to condone the delay that is caused in filing the criminal appeal. Hence, following order.

(4)

criapln643.23

ORDER

- a] Criminal application stands allowed.
- b] Delay of 2 yeas and 125 days is condoned.
- c] The appeal is already registered. No separate order to register the appeal is necessary.

[KISHORE C. SANT, J.]

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