

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

**28 CRIMINAL APPLICATION NO.2754 OF 2022
IN ALP/180/2019 WITH ALP/180/2019**

**RAMESH S/O. HARIRAM RAMCHANDANI SINCE DECEASED
THR. L.Rs SANGITA W/O. RAMESH RAMCHANDANI AND
OTHERS
VERSUS
NANASAHEB S/O. RAMLING DESHMUKHE**

Mr. D. S. Patil, Advocate h/f Mr. S. S. Gangakhedkar, Advocate
for the applicant

Mr. N. K. Pardeshi, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 23rd MARCH, 2023

P C.

1. Learned advocate for the applicants at the outset seeks leave to correct the name of the appellant-deceased. Leave is granted as prayed for.

2. Heard the learned advocates for the parties.

3. This is an application to bring on record the applicants in place of deceased-appellant namely Ramesh

Hariram Ramchandani and condonation of delay of 91 days that is caused in filing this application. The deceased had filed the application seeking leave to file an appeal against acquittal which is pending in this court. During pendency of the said application unfortunately the deceased died on 24-08-2020 and therefore, this application is moved by his legal heirs. The reason assigned is that the applicants were not aware of filing of the appeal by the deceased. It is only on getting the knowledge they have immediately filed this application.

4. Learned advocate for the respondent vehemently opposes the application for condonation of delay and inviting attention to the special power of attorney that was executed by the deceased in the name of applicant No.3 in this application giving him power to file the complaint under Section 138 against the respondent in which now respondent is acquitted. He further submitted that even the deposition of special power attorney holder was recorded in the trial court and thus he submits that he has knowledge of the proceeding. He further

submits that no date of acquiring the knowledge of filing of the application is stated in the application, each days delay need to be explained. However, there is no any explanation of each days delay. He relies upon the judgment reported in *2007 (1) Mh.L.J. 807 in the case of Kamlabai Narasaiyya Shrimal and another Vs Ganpat Vitthalrao Gavare* where it is held that it is necessary to explain each days delay. It was a case of filing of an appeal. It is not the case that the application seeking leave to file an appeal is already filed. It is only a question of bringing the legal heirs on record.

5. This court finds that in such cases no hyper technical approach need be taken. However, at the same time it needs to be considered that already there is acquittal recorded in favour of the respondent as his innocence is fortified and still he is made to face the appeal.

6. Considering this, the respondent needs to be compensated adequately. Hence, the following order:-

(4)

criapln2754.22

ORDER

- a] The criminal application is allowed.
- b] Applicant Nos. 1 to 4 are allowed to prosecute the application for leave to file an appeal No. 180/2019 subject to deposit of cost of Rs.10,000/- within two weeks in this court by the applicants.
- c] The delay of 91 days in filing this application is condoned.

[KISHORE C. SANT, J.]

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