

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

**CRIMINAL APPLICATION NO.3929 OF 2022
IN ALPST/10957/2022**

**SULOCHANA W/O. RAMESH KOKATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. D. R. Dhumal, Advocate for the applicant
Mr. G. O. Wattamwar, APP for the respondent/State
Mr. B. R. Sontakke, Advocate for respondent Nos. 2 to 5.

CORAM : R. M. JOSHI, J.
DATE : 25th JULY, 2023

P.C. :-

1. This application is for condonation of delay of 227 days in filing application for leave to appeal against the order of judgment of acquittal dated 08/04/2022 passed in S.C.C. No. 788/2014. The applicant is the informant/victim. It is a contention of the applicant that she is residing in a village and that after getting the knowledge of the judgment and order present application is filed.

2. Learned counsel for respondent Nos. 2, 3 and 5 opposed the application by referring to provisions of 378(5) of Cr.P.C. According to him if the application is not filed within a period of six months then the right of the application gets extinguished. It is also contended that there are no specific reasons mentioned for the contention of the delay according to him application is filed in causal manner.

3. Perusal of Section 378 (5) of Cr.P.C. does not show that the

right of the person to prepare an application gets distinguished. That is the reason why provision is made for filing application for condonation of delay. Considering this Court does not accept the argument advanced by the learned counsel for the respondents in that regard.

4. As far as the merits of the application is concerned, it is specifically stated that applicant is a villager. Unless the courts find any malafides in not preferring an application in time and unless the position of the respondents has changed materially on account of non filing of the application in time, ordinarily delay needs to be condoned liberally. It is always in the interest of the parties that the lis between them is decided on merits rather than its dismissal on technicalities. This Court does not find any malafides which can be attributed to the present applicant for not preferring the application within time. Hence by considering delay of 227 days in filing appeal is condoned. As a result, application stands allowed.

5. Application for leave to appeal be registered.

6. Learned counsel Mr. Sontakke for respondent Nos. 2 to 5 waives service of the said application on behalf of these respondents. Learned APP waives service of notice for respondent/State.

7. By consent of both sides, stand over to 19th August, 2023.

(R. M. JOSHI, J.)

ssp