

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL ST NO. 5770 of 2023
WITH
INTERIM APPLICATION NO. 1131 OF 2023
WITH
INTERIM APPLICATION NO. 1128 Of 2023

Mahendra Brijlal Kori .. Appellant
Versus
The State of Maharashtra & Ors .. Respondents
...

Adv. Savita Prabhune, for the appellant
Ms. Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd APRIL 2023

P.C:-

1 Being aggrieved by the judgment of the Special Judge (POCSO Act), Thane, under which the appellant was convicted for committing an offence under the provisions of IPC and POCSO Act, an appeal is instituted. Since there is a delay in filing the appeal, Interim Application no. 1128 of 2023 is taken out seeking condonation of delay of 4 years and 97 days in filing the appeal.

2 Two important aspects need to be considered at this stage, being the appellant is in custody and the appeal is filed

through Adv. Savita Prabhune, who came to be appointed through legal aid.

Perusal of the application would reveal that applicant has clearly stated that he was sentenced in Special Case No. 227 of 2014 and on the judgment being passed on 29/08/2018, he was provided the certified copy of the judgment on the same date. However, it is specifically pleaded that his counsel in the trial court did not inform him about his right to file an appeal. Apart from this, since he was in custody, he was unable to engage Advocate for filing of appeal and also due to poverty he could not arrange money for filing the same, as he was in custody since 2/08/2014.

Left to find a course of action for himself, the applicant through the Superintendent of Central Jail, Amravati addressed a letter to the Legal Aid Committee on 19/01/2019, and sought assistance from the Legal Aid, for filing of the appeal.

3 The learned counsel Ms. Prabhune would submit that by an order dated 2/03/2019, she was appointed through Legal Aid to represent the appellant, who was housed in Amravati Central Prison.

The learned counsel would submit that on the basis of the photocopy of the judgment, which was received by her she prepared an appeal and presented it to the department for being filed. However, since the appeal was not accompanied with a

certified copy of the judgment, the filing was not accepted and accordingly she returned the necessary papers to the Legal Services Authority.

The learned counsel has invited my attention to a direction issued by the division bench of this Court on 30/03/2022, on taking note of a similar situation, where an criminal appeal was filed sans the certified copy of the impugned judgment on the ground that the certified copy was never given by the Legal Services Authority.

The division bench exempted the legal aid counsel Mr. Mali from filing the certified copy and not only this it issued directions to all the Advocates, who are either appointed by Court or by the Legal Aid Services Authority, that non-accompaniment of a certified copy of the judgment shall not act as an impediment to accept the papers and register the criminal Appeals by the office.

4 It is only pursuant to this direction issued on 30/03/2022, the appeal filed by Ms. Prabhune came to be accepted. However, this had occasioned a delay of around 4 years and 97 days. Hence the appeal is preceded by the application for condonation of delay, seeking the delay to be condoned in the aforesaid circumstances.

5 The applicant on account of his abject poverty and being incarcerated approached the Legal Services Authority, as by way of last resort, since he was devoid of material resources

to file the appeal.

It is not in doubt that the Legal Services Authority received the request of the applicant and also appointed the counsel to represent him on 2/03/2019, but since the certified copy was not forwarded by the convict, the appeal was not accepted. However, when the clarification was offered on 30/03/2022 the appeal is accepted and it is accompanied by an application seeking condonation of delay.

6 In the wake of the reasons stated above since I am convinced that the delay is bonafide and the applicant cannot be deprived of his right to challenge his conviction in a higher court and particularly when he relied upon the Legal Services Authority for exercising such right, procedural formalities need not be a ground to deprive him from availing the remedy available to him by way of an appeal.

For the aforesaid reasons, the application is allowed by condoning the delay of 4 years and 97 days. The Registry is directed to register the Appeal.

Criminal Appeal (St) No.5770 of 2023

7 Appeal admit.

8 Call for Record and Proceedings.

9 Learned APP waive notice for respondent no.1

10 Let the notice be issued to the respondent no.2 and 3 through Kalwa Police Station, informing them about the appeal

being filed by the accused and the appeal being admitted. The notice shall also intimate them that they have right to be represented before this court either by personally remaining present or through a counsel of their choice or counsel appointed through legal aid so as to contest the appeal.

11 The learned counsel for the appellant would vehemently submit that he is sentenced to suffer RI for 10 years and out of which he has undergone approximate period of 9 years of incarceration. She therefore request for expeditious hearing of the appeal.

In my considered opinion her request deserve consideration.

The Registry is directed to take effective steps for calling the record and proceedings from the Special Court at Thane, who has delivered the judgment in Special Case No. 227 of 2014 and it is also directed that the paper book shall be expeditiously prepared by making use of the summer vacation.

List the appeal for hearing in the week commencing from 19/06/2023, when the concerned police station will intimate the respondent no. 2, 3 and 4 of the admission of the appeal, they shall be specifically informed, that the appeal is likely to be taken up for hearing in the week commencing from 19/06/2023.

(SMT. BHARATI DANGRE, J.)