

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPLICATION FOR LEAVE TO APPEAL NO. 167 OF 2022

Jagdish Khanderao Tajne ...Applicant
vs.
The State of Maharashtra and Ors. ...Respondents

Adv. Harsh Ramchandani i/by Adv. Vidya Pal More - Advocate for the Applicant
Mr. N. B. Patil - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 23rd JANUARY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant. He is the father of the deceased-Akash and he is first informant. An Offence was registered for the Vehicular accident and the Respondent was tried for the offence punishable under Sections 279, 304A, 338, 427 of the Indian Penal Code and under Sections 184, 134 read with 177 of the Motor Vehicle Act. By the impugned judgment the Respondent No. 2 was acquitted on 28/03/2022. Now the first informant wants to prefer an appeal.

2. As contemplated under Section 378 of the Code of

Criminal Procedure in police case, the appeal at the instance of the first informant cannot be filed before this Court. As per Section 378 (1)(a) if the offence is cognizable and non bailable, the appeal can be filed before the Court of sessions against order of acquittal passed by the learned Magistrate. A victim can very well prefer an appeal as per the proviso of Section 372 of the Code of Criminal Procedure. Forum is also provided. If there is conviction, the Appellate forum is provided against the order of conviction passed by any Magistrate, the appeal lies to the Court of sessions. As per proviso, the similar forum is provided if there is an appeal filed by the victim.

3. In view of that appeal is not maintainable before this Court. Learned Advocate for the Appellant seeks leave to withdraw the appeal and seeks for condonation of delay when the appeal will be preferred before the court of sessions.

4. In view of that appeal is disposed of as withdrawn. The Court of sessions, Nashik may consider the period spent by the Applicant in prosecuting this appeal as sufficient reason for condonation of delay.

[S. M. MODAK, J.]