

SATISH
RAMCHANDRA
SANGAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO. 4424 OF 2022

IN

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 25 OF 2023

Digitally signed by
SATISH RAMCHANDRA
SANGAR

Date: 2023.03.01
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Dalbir Singh Harjinder Singh Saini ... Applicant

In the matter between

Dalbir Singh Harjinder Singh Saini ... Applicant

Versus

Manojkumar Manikchand Pandey and Anr. ... Respondents

Mr.Amritpal Singh Khalsa a/w Ms.Satvinder Kaur Bindra, Advocate for Applicant.

Mr.H.J.Dedhia – APP for the Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATED : 27th FEBRUARY, 2023

P. C. :-

CRIMINAL INTERIM APPLICATION NO. 4424 OF 2022

1. Heard learned Advocate Shri.Khalsa for the Applicant.
2. There is a delay of 52 days in filing this Appeal. He has challenged the order passed by the learned Magistrate, Ulhasnagar on 11th August, 2022 in SCC No. 4208 of 2019. The Summary Case filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [“NI Act”] was dropped and Accused was acquitted.
3. Initially, the Appellant approached the Court of Additional Sessions Judge at Kalyan by way of a Revision. Later on, realized that this is wrong remedy and then present Appeal is filed that is why, there is a delay. A copy of status from District Court website is tendered and marked as Annexure-X. That Criminal Revision Application was withdrawn on 23rd February, 2023.

4. Though the Respondent No.1 is served as per the report given by Senior Police Inspector – Narpoli Police Station – Bhiwandi dated 23rd February, 2023, the Respondent No.1 has not appeared. He has refused private service and the Appellant is having those documents.

5. Hence, I have heard learned Advocate for the Applicant. The delay is properly explained in Para Nos.5 and 6. Hence, Application is allowed in terms of prayer clause (a) and hence, disposed of.

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 25 OF 2023

6. Heard learned Advocate for the Applicant and also heard learned APP for the Respondent No.2-State.

7. When notice was issued on 30th January, 2023 on delay condonation application, it was also issued on Leave Application. It was observed that an endeavour should be made to dispose of the matter finally. Notice of Leave Application is also served through Police.

8. The impugned order is passed on an Application preferred under purported exercise of power under Section 322 read with Section 251 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”]. The provisions of Section 322 requires the Magistrate to stay the proceedings and submit the case to the Chief Judicial Magistrate. Whereas, Section 251 of Cr.P.C., deals with stating the particulars of the offence to the Accused. In this case, a plea is already recorded on 15th December, 2021 and the Application is filed on 2nd July, 2022. So, the order is ex facie illegal. Leave has to be granted. Hence, Leave is granted. Admit the Appeal.

(S. M. MODAK, J.)