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

CRIMINAL REVISION APPLICATION NO. 413 OF 2024

Rajendra Dubey and Ors.

.. Applicants

Versus

Mukesh Kishore Bhatia and Anr.

.. Respondents

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- Mr. Kamlesh R. Tiwari a/w. Mr. Shivam Mishra, Advocates for Applicants.
 - Mr. Mithilesh Mishra, Advocate for Respondent No.1.
 - Ms. Sangita E. Phad, APP for Respondent No.2 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 19, 2024.

P.C.:

1. Heard Mr. Tiwari, learned Advocate for Applicants; Mr. Mishra, learned Advocate for Respondent No.1 and Ms. Phad, learned APP for Respondent No.2 – State.

2. This Criminal Revision Application (for short “**CRA**”) takes exception to the order dated 23.07.2024 passed by the learned Additional Sessions Judge, Thane rejecting Criminal Misc. Application No.157 of 2024 alongwith the Application filed for condonation of delay below Exhibit “1”. The precursor to filing the Criminal Misc. Application No.157 of 2024 is the order passed by this Court on 13.03.2024 which is appended at page No.98 of the CRA.

3. In regard to the said order and the liberty granted to the Applicants to file appropriate proceedings before the Sessions Court, Applicants filed Criminal Revision Application No.157 of 2024. However, in order to obviate the delay of six years in filing the said Application. Applicants have filed Application below Exhibit “1” seeking condonation of delay which has been rejected by the impugned order.

4. Mr. Tiwari, at the outset, would draw my attention to the reliefs prayed for in the present CRA. He would submit that though he has exercised his right pursuant to liberty granted by this Court to file Revision Application before the Sessions Court, the impugned order which summarily dismisses the Revision Application itself as stated in the order. He is aggrieved and has therefore prayed for prayer clause ‘a’ for seeking to set aside the issuance of process in Summary Criminal Case No.1563 of 2018 on merits. In so far as prayer clause ‘b’ is concerned, it seeks setting aside of the impugned order dated 23.07.2024. The said order is appended at page No.112 of the CRA. On perusal of the said order, it is seen that Application for condonation of delay has been rejected and not considered at all, rather on the parties submitting the current stage of the complaint, the learned Trial Court has noted the stage of the complaint and opined that the challenge to the issue process order has therefore being rendered infructuous. On this sole ground, the Revision Application itself has

been dismissed. However, while dismissing the Application, learned Trial Court has held that the Application is devoid of merits and therefore deserves to be dismissed.

5. The aforesaid findings are not supported by any reasons whatsoever on the face of record. Nevertheless, in so far as prayer clause 'a' in the present CRA is concerned, the same is an infructuous prayer because the Revision Applicants have already approached the Sessions Court by filing the appropriate Application. In so far as issue of condonation of delay is concerned, it is seen that the reasons for delay are stated in paragraph No.1 on the Application below Exhibit "1" and I have perused the same.

6. One of the prime reason for the delay of six years as stated therein is due to the covid-19 pandemic. However the period of six years would desirably stand reduced to approximately three and half years in view of the Supreme Court order passed in *Suo Moto* Petition No.3 of 2020 arresting the period of limitation during the covid pandemic from 15.03.2020 till 28.02.2022. That apart, other reasons have been stated in the Application for the delay which ought to have been considered. Considering the legal issue involved in the present case which has been efficiently argued by Mr. Tiwari, summarily dismissing the Application for condonation of delay would be no solace to the Revision Applicants before me. It would render the Revision

Application infructuous. Undoubtedly, Revision Applicants also spent some time in filing the Writ Petition before this Court wherein the order dated 13.03.2024 came to be passed by this Court pursuant to which Revision Applicants approached the Sessions Court which has concurrent jurisdiction to entertain the Revision Application. This also contributed to the delay.

7. In view of the above and without delineating the issue on merit, I am inclined to quash and set aside the impugned order dated 23.07.2024 and simultaneously allow the Application below Exhibit “1” seeking condonation of delay filed by the Revision Applicants. The delay stands condoned for the above reasons. Resultantly, Criminal Misc. Application No.157 of 2024 is restored back to the file and record of the Sessions Court and the concerned Sessions Court is directed to determine the same strictly in accordance with law by a speaking order after hearing both the sides.

8. Undoubtedly, setting aside of the impugned order is not unconditional for the Revision Applicants. For the delay that has been incurred Applicants are directed to pay costs of Rs.5,000/-. Costs shall be paid to the A.K. Munshi Yojana’s J.T. Sheth Mandbuddhi Vikas Kendra, a Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18

years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163 within a period of two weeks from today.

9. The Sessions Court is directed to register the Criminal Revision Application. Considering the stage of the complaint, it is directed that the said Revision Application No.157 of 2024 shall be heard and decided by the Sessions Court as expeditiously as possible and in any event within a period of eight (8) weeks from today.

10. Criminal Revision Application stands allowed in terms of prayer clause 'b' only.

11. In the interest of justice and the issue which has been argued on merits, it is directed that the learned Trial Court shall defer the hearing of the trial / complaint until the decision of the Sessions Court in the Revision Application is delivered.

12. Parties shall be at liberty to place the said decision before the Trial Court in accordance with law.

13. With the above directions, Criminal Revision Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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