



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLN. (APPA) NO. 291 OF 2024
IN
CRIMINAL APPEAL ST. NO. 2274 OF 2024**

Roshan Sambhaji Gaikwad

-Vs.-

The State of Mah., thr. PSO, PS Pinjar, Dist.Akola and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders.
or directions and Registrar's orders.

Mr. R.S.Kurekar, Adv. for the applicant.
Mr. S.S.Doifode, APP for the respondents-State.
Mr. S.V.Sirpurkar, Adv.for respondent Nos.2 to 4.

**CORAM: SMT. VIBHA KANKANWADI &
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 14TH JUNE, 2024

The present proceedings though registered as criminal application and it is for condonation of delay to file appeal. Perusal of the memo of appeal to be filed shows that it is stated to be under section 378(4) of the Code of Criminal Procedure. However, the appellant is the informant, who want to challenge the acquittal of the respondent Nos.2 to 4 for the offence punishable under sections 498-A, 302 and 304-B read with section 34 of the Indian Penal Code. It was a Police case and therefore, the appeal cannot be under section 378(4) of the Code of Criminal Procedure. The learned Advocate for the applicant submits that in fact he had tried to file memo of appeal under section 372 of the Code of Criminal Procedure, but due to insistence of the office, he had corrected the memo of appeal. The settled position of law mentioning of wrong

provision will not cause any kind of prejudice to anybody, but it can be considered that the informant, who is the father of the deceased, can be said to be a victim as defined under section 2(wa) of the Code of Criminal Procedure. The proviso to section 372 of the Code of Criminal Procedure came into effect from 31/12/2009 and therefore, in view of the said proviso, the appeal to be filed would be under the said provision by the present informant. At this stage, we may only take a note of the decision of the Three Judge Bench of Hon'ble Supreme Court in **Mallikarjun Kodagali (Dead) Represented Through Legal Representatives v. State of Karnataka and others; (2019) 2 SCC 752**, wherein it has been held that a substantive right is made available against the orders of acquittal rendered after 31/12/2009 in the proviso to section 372 of the Code of Criminal Procedure and for that purpose for exercising that right no leave is required to be sought.

2. Place the application for condonation of delay on 03/07/2024.

(MRS.VRUSHALI V. JOSHI, J) (SMT.VIBHA KANKANWADI, J)