

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 81 OF 2025

Anand Baburao Shinde. ...Applicant.

Versus

Dattatraya Damodar Deshpande. ...Respondent.

Mr. Asif Latif Shaikh, Advocate for the Applicant.

Mr. Gaurav Bhawnani, Advocate for the Respondent.

Ms. Mahalaxmi Ganpathi, APP for the State.

CORAM: ASHWIN D. BHOBE, J.

DATED: 17th OCTOBER, 2025.

PC:-

1. Heard Mr. Asif Shaikh, learned Advocate for the Applicant and Mr. Gaurav Bhawnani, learned Advocate for the Respondent.

2. By the present Application filed under section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the Applicant(original Accused) has questioned the order dated 19th November, 2024, passed by the Court of Additional Sessions Judge, Panvel-Raigad in Criminal Misc. Application No. 156 of 2022, refusing to condone the delay of 5 days in filing the Criminal Appeal, challenging the Judgment and Order dated 23.8.2022 passed by the J.M.F.C, Karjat in Summary Case No.

263 of 2023 convicting the Applicant.

3. Mr. Shaikh, learned Advocate for the Applicant submits that the delay of 5 days in filing Appeal arose on account of a communication gap between the Applicant and his Advocate. He submits that the Applicant had intention to file an appeal questioning his conviction. He submits that the delay of 5 days is not intentional and the same is bonafide. He submits that the Additional Sessions Judge, Panvel-Raigad has taken a hyper technical view and erroneously rejected the Criminal Misc. Application No. 156 of 2022.

4. Mr. Bhawnani, learned Advocate for Respondent submits that Criminal Misc. Application No. 156 of 2022 filed by the Applicant shows negligence and inaction on the part of the Applicant. He submits that the Applicant having suffered conviction ought to have acted diligently. He submits that for the reasons attributable to the Applicant, the Respondent cannot be made to suffer.

5. Delay in filing the Criminal Appeal is said to have occasioned due to the communication gap between the Applicant and his Advocate. Record does not indicate any allegation of malafide against the Applicant. Even otherwise, the Applicant would not have gained by delaying the filing of the appeal, moreso when the Applicant was convicted and sentenced to undergo imprisonment by Judgment and Order dated 23.8.2022 passed by the J.M.F.C, Karjat in Summary Case No. 263 of 2023. Delay is hardly of 5 days. Applicant has shown sufficient cause warranting condonation of delay.

6. No doubt, on account of the delay, the Respondent is made to face further proceedings. If the delay is not condoned prejudice would be caused to the Applicant, whereas prejudice, if any, caused to the Respondent can be compensated by imposing cost on the Applicant quantified as Rs. 10,000/-. Payment of cost being condition precedent.

7. Mr. Asif Shaikh on instructions from the Applicant states that costs shall be paid to the Respondent within two weeks from today and acknowledgment receipt will be filed in Registry of the Court of Sessions Judge, Panvel-Raigad. It is only upon the proof of payment, the appeal shall be registered.

8. Considering the law enunciated by the Hon'ble Supreme Court in *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy & Ors.*¹, Revision application is allowed on the following terms:-

(a) Impugned order dated 19th November, 2024, passed by the Court of Additional Sessions Judge, Panvel-Raigad in Criminal Misc. Application No. 156 of 2022 is set aside. Criminal Misc. Application No. 156 of 2022 is allowed, subject to Applicant paying cost of Rs 10,000/- to the Respondent within a period of two weeks from today and producing acknowledgment receipt before the Registry of the Sessions Court, Panvel-Raigad. Upon production of the acknowledgment receipt Criminal Appeal filed by the Applicant be registered.

(b) Failure to pay the cost within the period referred

1 (2013) 12 SCC 649.

in para (a) above, will result in dismissal of the Criminal Revision Application No. 81 of 2025 with cost of Rs. 10,000/-.

9. Criminal Revision Application No. 81 of 2025 is allowed in the above terms.

(ASHWIN D. BHOBE,J.)