



*Judgment*

Cr.WP-363-2025

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :  
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 363 OF 2025

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Sau. Kalyani Ankush Mahalle,  
Aged 30 years, Occ. Housewife,  
R/o. C/o. Shri. Rajendra Dadaji Ladke,  
Vitthal Mandir Ward, Chandrapur,  
Tah. & Dist. Chandrapur.

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**PETITIONER**

**- - V E R S U S - -**

- 1] Sau Seema Manish Fule,  
Aged 40 years, Occ. Housewife,
- 2] Shri. Manish Shankarrao Fule,  
Aged 45 years, Occ. Service,  
Both R/o. Khandelwar Layout,  
Near Sai Baba Mandir,  
Behind Tahsil Office, Narkhed,  
Tah. Narkhed, Dist. Nagpur.
- 3] State of Maharashtra,  
Through Police Station Officer,  
Chandrapur, Police Station-Chandrapur,  
Dist. Chandrapur.

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**RESPONDENTS**

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Mr. A.M. Chandekar, Advocate for the Petitioner.  
Mr. A.A. Dhawas, Advocate for the Respondent Nos.1 and 2.  
Mr. G.S. Umale, A.P.P. for the Respondent No.3/State.  
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**CORAM : M.M. NERLIKAR, J.**

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**Judgment is reserved on 08/12/2025.**  
**Judgment is pronounced on 15/12/2025.**  
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**J U D G M E N T**

Rule. Rule made returnable forthwith. Heard finally  
with the consent of learned counsel for the parties.

2. By way of present petition, the petitioner is  
challenging the order dated 12/03/2025 passed below Exh.-1  
in Misc. Criminal Application No. 88/2024, wherein the learned  
Sessions Judge, Chandrapur, rejected the application for  
condonation of delay preferred by the petitioner.

3. Brief facts of the case are that, the present petitioner

**3**

has lodged F.I.R as Crime No. 817/2020 on 05/11/2020 for the offence punishable under Sections 498-A, 504 read with Section 34 of the Indian Penal Code, 1860, against the husband and his family members. After completion of investigation, charge-sheet was filed on 31/12/2020. During pendency of trial, discharge application under Section 239 of Code of Criminal Procedure, 1973, was filed by the husband and his parents. The said application was partly allowed below Exh.31 dated 15/02/2024 in R.C.C. No.131/2021, wherein the respondent Nos.1 and 2 came to be discharged. Against the said order, the petitioner preferred Criminal Revision Application before the Sessions Court along with application for condonation of delay of 4 months and 16 days. However, the learned Sessions Court, Chandrapur, rejected the said application. Against that order, the petitioner preferred the present writ petition.

**4.** The learned counsel appearing for the petitioner

**4**

submits that the Revisional Court ought to have granted an opportunity to lead evidence, however, without there being any opportunity to lead the evidence, the Court has rejected the application and passed the impugned order. The delay has occurred due to the fact that the petitioner intended to file the an appeal against the said order before the Bombay High Court, Bench at Nagpur. The petition to that effect was also prepared and sworn in on 22/04/2024. Not only that, a presentation form to that effect was also filled in. However, later on, it transpired that the said appeal would not be maintainable, and against the order of the learned Judicial Magistrate First Class, Chandrapur, dated 15/02/2024, the Revision would lie, therefore, the delay was caused. He further submits that before rejecting the application, the Sessions Court ought to have granted him an opportunity to lead evidence, however, opportunity was not granted, and therefore, submits that the matter be remanded back for fresh consideration and opportunity be granted to lead the evidence.

**5**

5. On the other hand, the learned counsel appearing for the respondent vehemently submits that a detailed order was passed by the learned Sessions Judge, Chandrapur. In fact, the petitioner tried to mislead the Court as no petition was filed before the High Court. The petitioner is an advocate and she was well aware of what remedy is to be pursued. There is no explanation so far as delay of 4 months and 16 days is concerned, and no sufficient cause has been shown in the application. He further submits that there was no stamp number or filing number mentioned in the presentation form to show that she has filed the appeal before the High Court on 25/04/2024. The respondent has applied under the Right to Information Act seeking information in respect of filing of an appeal by the petitioner, and the information was received that the petitioner has not preferred any appeal or proceedings before the High Court, and therefore, he submits that petitioner failed to make out a case for condonation of delay, and therefore, prayed to reject the petition.

**6**

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondent. Admittedly, the application for condonation of delay was rejected by the Revisional Court by observing that the petitioner had neither filed an appeal before the High Court within the limitation period, nor filed the appeal before the Sessions Court within the prescribed period. Presentation form filed by the appellant does not bear the compliance which the concerned clerk or the appellate authorities were required to do to show that at any point of time it was presented before the High Court. Further, it was observed that the petitioner has not shown due diligence and even after getting the knowledge in September, 2024, has not calculated the delay properly, and therefore, on these ground, the application was rejected.

7. It appears from the record that the delay of 4 months and 16 days was occurred in preferring the Revision petition before the Sessions Court. Initially, the application filed by

**7**

respondents herein, who is original accused, for discharge was allowed on 15/02/2024. The copies were obtained on 22/02/2024, and the affidavit was sworn in on 22/04/2024 for filing the appeal, however, it appears that the appeal was not filed before the High Court, and accordingly, the Revision Petition was filed on 01/10/2024. It appears from the record that initially the petitioner intended to file an appeal before the High Court, which can be gathered from the appeal memo, wherein stamp of solemn affirmation is appearing, and the date mentioned is written as 22/04/2024. The said stamp is alongwith seal of notary. If this appeal memo is to be considered, then naturally there is force in the arguments on behalf of the petitioner that the trial Court ought to have granted an opportunity to lead evidence. However, it appears that wrong arguments were advanced on behalf of the petitioner that she has filed the appeal before the Bombay High Court, Bench at Nagpur, however, the fact remains that the appeal was not filed before the High Court. Even it appears that

**8**

it was only prepared, and the affidavit was merely sworn in on 22/04/2024.

8. The Petitioner has relied on the judgment of this Court in the case of *Smt. Kusumbai Kachruji Sukhdev and Another VS. Bhaurao Medhoji Meshram and Another*, (Writ Petition No.282/2012), decided on 08/01/2013, wherein this Court in Para No.3 has held as under:

*“3] It is not in dispute that the appellate Court has not called upon the parties to lead evidence on the question of condonation of delay. The court should have fixed the matter for leading the evidence on the application for condonation of delay. Without permitting the parties to lead evidence, the application has been decided. In view of this, the order impugned cannot be sustained. The same needs to be quashed and set aside.”*

Admittedly, Section 5 is applicable to both Civil and Criminal Proceedings. Though, the judgment referred by the petitioner pertains to the civil side, however, the same analogy

**9**

would be applicable, as Section 5 is also relevant to criminal matters. Therefore, considering the above facts and circumstances, it would be in the interest of justice to permit the petitioner to lead evidence in support of her contention. The Court ought to have fixed the matter for leading evidence on application for condonation of delay. Failure on the part of the learned Sessions Judge would amount to denial of the opportunity of hearing. Hence, the following order:

**ORDER**

- (i) The Criminal Writ Petition is **partly allowed**;
- (ii) The impugned order dated 12/03/2025 passed below Exh.-1, in Misc. Criminal Application No. 88/2024, by the learned Sessions Judge, Chandrapur, is quashed and set aside;
- (iii) The matter is remanded back for fresh consideration on the application for condonation of delay;
- (iv) The parties are at liberty to lead the

**10**

evidence and after leading the evidence, as per law,  
the Court shall pass appropriate order;

(v) With these observations the petition is  
disposed of;

(vi) Rule is made absolute in above terms.

[ **M. M. NERLIKAR, J** ]