
(2013) 08 BOM CK 0248

In the Bombay High Court

Case No : Criminal Revision Application No. 143 of 2012

Mohd. Azim Sheikh Ibrahim and Others

APPELLANT

Vs

Mehamuda Anjum Mohd. Azim and Another

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 991

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Judgement

P.D. Kode, J.—Heard. Admit. Heard finally by consent of the parties.

2. By this application in revision the original accused in Reg. Criminal Case No. 1160/2003 of the J.M.F.C. Court No. 4, Amravati as well as the non applicants in Criminal Application for condonation of delay i.e. M. Cri. A. No. 28/2012 preferred by present non applicant No. 1 for preferring an appeal against judgment and order of acquittal, have prayed for examining the legality, correctness and propriety of order dated 01.11.2011 passed by Court of Session, condoning the delay of 66 days in preferring an appeal against the judgment and order of acquittal i.e. preferred by the complainant.

3. The complainant-non applicant had made complaint to the Magistrate on the allegation that the applicants herein having committed an offence u/s 405, 406 r/w 34 of the I.P.C. The trial Court, after trial, was pleased to acquit the applicants-accused from the charge of commission of such offences committed. The non applicant-complainant, thereafter, presented an application for condonation of delay for preferring an appeal purported to be an appeal under provisions of section 372 of the Cr.P.C. The Sessions Court condoned said delay vide order dated 08.08.2012. The said order is assailed by the accused-applicants in the present proceeding.

4. The decision of this Court in the case of Top Notch Infotronics (I) Pvt. Ltd. Vs. Infosoft Systems and Others, in term reveals a view has been taken that word

"Victim" as defined u/s 2(wa) of the Cr.P.C. relates only to the case instituted upon the police report. It also reveals that appropriate remedy for complainant in private case to prefer an appeal against the judgment and order of acquittal passed in such case is by way of seeking leave u/s 378(4) of the Cr.P.C. Having regard to the same, the appeal presented along with the application for condonation of delay by non applicant was misconceived, due to it being not in accordance with the provisions of procedural law regarding preferring of appeal against judgment and order of acquittal recorded in cases instituted otherwise than on police report.

5. Resultantly, the application for condonation of delay preferred by non applicant No. 1 was superfluous. The order passed thereon condoning the delay was illegal and improper. The said order cannot be legally sustained. As a matter of fact, no period of limitation is provided for the appeals which are made permissible under the proviso of section 372 Cr.P.C.

6. In the aforesaid circumstances, there appears all substance in the submissions canvassed by the learned counsel that the order passed condoning the delay as well as entertaining an appeal by the Sessions Court is manifestly illegal and the same deserves to be quashed and set aside. Resultantly, order dated 08.08.2012 passed by the Court of Session in M. Cri. A. No. 28/2012, condoning the delay is hereby quashed and set aside. Similarly, the appeal presented along with said application also stands dismissed. However, in the circumstances, there would be no order as to costs.

It is clarified that it wilt be open to non applicant No. 1 to pursue appropriate remedy, in accordance with taw for redressal of the grievance, if any, due to recording of an order of acquittal in the complaint made by him.