



MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 344 OF 2019
IN
APPLICATION FOR LEAVE TO APPEAL (STATE) (ST) NO.76 OF
2019**

The Assistant Commissioner Of Customs (R & ... Applicant
I), Division, New Customs House, Mumbai

Vs.

Rajendra Sanghavi And Ors.

... Respondents

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signed by
MANGALTAI
JAYWANT
JADHAV
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Ms. Geeta Nayyar for the Applicant.

Adv. Kiran Kanal for Respondent Nos.1 and 2.

Mr. D. J. Haldankar, APP for the State.

CORAM : GAURI GODSE, J.

DATED : 11th NOVEMBER 2025

ORDER:

1. This application is for condonation of delay of 162 days in filing the application seeking leave to file an appeal. Respondent Nos.1 and 2 are acquitted for the offence punishable under Section 135(1)(a)(b)(ii) of the Customs Act, 1962 along with Section 120-B of the Indian Penal Code.

2. Learned counsel for the applicant submits that the reasons for delay are explained in paragraphs 2 to 6 of the application. She

submits that after the certified copy was received on 5th June 2018, the opinion to file the appeal was received on 11th June 2018 and thereafter steps were taken to file the appeal. She submits that due to the time required for the procedure for getting the approval, the delay has occurred in filing the appeal. She submits that the delay is unintentional and thus reasons stated in the application be accepted.

3. Learned counsel for respondent no.1 has filed an unaffirmed written reply to oppose the application for delay condonation. The reply is signed by the learned advocate. The reply is not even signed by respondent nos.1 and 2. Learned counsel for respondent nos.1 and 2 submits that the order of acquittal is dated 26th April 2018. Though the judgment was signed on 26th April 2018, she submits that as per the dates mentioned in the copy of the judgment, the judgment was typed on 2nd May 2018 and checked and signed on 28th May 2018. She further submits that there is no explanation given regarding date of filing of the application and the steps taken till 23rd August 2018 after the opinion was received on 11th June 2018. She thus submits that vague reasons are given in the application.

4. Learned counsel for the respondent nos.1 and 2 submits that

even on merits the prosecution has failed to prove the allegations. She points out that the prosecution has failed to examine any witnesses and the complaint of 1994 remained pending till 2018 as no steps were taken to adduce evidence. She therefore submits that even on merits the applicant has no case against the accused. Two of the accused were discharged and the prosecution's evidence is insufficient so far as the present respondents are concerned. She therefore submits that no purpose will be served by condoning the delay. She thus opposes the prayer for delay condonation as well as the prayer for leave to file appeal.

5. I have perused the papers of the application for condonation of delay and the papers of the application for leave to file appeal. The dates mentioned in the impugned judgment refers to when the certified copy was ready. From the dates mentioned in the certified copy, it appears that application was immediately filed and the certified copy was received on 5th June 2018 as contended by the applicant. The applicant has further mentioned the dates when the opinion was received and the further steps taken to prepare the appeal and file it. Though, learned counsel for respondent nos. 1 and 2 has tendered a written reply signed by the advocate, there is no affidavit-in-reply filed by respondent nos.1 and 2 to oppose the statements of facts made in the application for delay condonation.

The steps taken by the applicant are mentioned in the application.

6. The Apex Court in the case of ***State of Nagaland Versus Lipok AO and Others***¹, held that when an application is filed on behalf of the Government, a pragmatic and justice oriented approach is required to be adopted by the Courts as various procedures are to be followed for seeking approval and actual filing of the application. Considering the legal principles settled in the decision of the Apex Court, the reasons stated by the applicant are required to be considered with a pragmatic approach. I see no reason to disbelieve the grounds raised in the application for condonation of delay.

7. So far as the submissions made on merits of the appeal that the complaint remained pending from 1994 to 2018 is concerned, it cannot be ground to disbelieve the grounds for condonation of delay. Learned APP relies upon the oral evidence and the documentary evidence produced on record of the trial Court to prove the allegations. For the reasons stated in the application, delay is condoned and the application is allowed in terms of prayer clause (a).

(GAURI GODSE, J.)

1 (2005) 3 Supreme Court Cases 752