



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

CRIMINAL WRIT PETITION NO. 871/2024

Sant Sawata Mali Nagri
Sahakari Pat Sanstha Ltd. Pusad,
Registration No.124 through its founder
president Shri Atmaram s/o Vishabharrao
Jadhav, Age 55 yrs., R/o. Pusad,
Tah. Pusad, Dist. Yavatmal.

...PETITIONER

VERSUS

Jagdish s/o. Bhagwan Jangid,
Age 55 yrs., Govind Nagar,
Kakaddati Pusad, Tah. Pusad,
Dist. Yavatmal.

...RESPONDENT

Mr. G.M. Kubade, Advocate for petitioner.
None for respondent.

CORAM : M. M. NERLIKAR, J.

DATE : 23.09.2025

ORAL JUDGMENT :

Heard.

2. By way of this petition filed under Article 227 of the
Constitution of India, the petitioner is challenging the order

dated 25.07.2024 passed in Misc. Application No.10/2022 by the learned Additional Sessions Judge, Pusa, wherein the petitioner prayed for condonation of delay in preferring the appeal under proviso to Section 372 of the Code of Criminal Procedure, 1973 ("Code").

3. Brief facts,

The petitioner is a registered Co-operative Society. The complaint was registered under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act") against the respondent for dishonour of cheque No.0009444, dated 19.04.2017 for Rs. 1,15, 748/-. The case was registered as Summary Criminal Case No. 1832/2017. The order of issuing process was passed against the accused on 06.12.2017. However, the accused was not present though the process was issued. Later on, the complaint was dismissed-in-default under Section 256 of the Code and thereby acquitted the accused by an order dated 03.02.2021.

4. On 28.02.2022, the petitioner approached the learned Additional Sessions Court, Pusa and challenged the order

dated 03.02.2021 by filing an appeal under proviso to Section 372 of the Code along with the Misc. Cri. Application No.10/2022 for condonation of delay of 362 days in preferring the appeal. However, on 25.07.2024, the learned Additional Sessions Judge, Pusad dismissed the application for condonation of delay on the ground that the delay is long, inordinate and not explained properly.

5. Against this order, the petitioner has preferred the present petition. The learned counsel for the petitioners submits that the delay is not intentional or deliberate. He further submits that though the appeal is filed under proviso to section 372 of the Code, however it is not necessary to file the application for condonation of delay and even if the application is filed, the said application ought to have been allowed by the learned Appellate Court. He further submits that the Appellate Court has committed gross error in not considering the purport of proviso to Section 372 of the Code. He further submits that proviso to Section 372 provides for the remedy to the victim.

There is no limitation provided in Section 372 of the Code to prefer an appeal under Section 372 of the Code.

6. Though the respondent was duly served in this petition, however none appeared. Opportunity was also given by way of last chance by an order dated 14.08.2025 passed by this Court, however, none appeared for respondent.

7. Upon hearing the petitioner and after perusal of the entire record, it appears that the order passed under Section 256 of the Code was under challenge before the Appellate Court in appeal, however as there was delay of 362 days, the appellant/petitioner has filed the application for condonation of delay. However, the learned Additional Sessions Judge, rejected the said application on the ground that the delay was not explained properly and there were no sufficient reasons.

8. Needless to mention at this juncture that, proviso to Section 372 of the Code does not provide any time limit to prefer an appeal by the victim. It is a statutory provision wherein a victim can file an appeal under proviso to Section

372 of the Code. This amendment was brought with an objective to give an opportunity to the victim, apart from the State to ventilate the grievance. Considering the object of proviso to Section 372 of the Code, the Legislature thought it fit not to put any rider of time limit and therefore, the Appellate Court ought not to have rejected the application of the appellant/petitioner for condonation of the delay. The Appellate Court ought to have allowed the application and registered the appeal and decided the same on merits. Under such circumstances, it would be useful to refer to the judgment of this Court in case of ***Ranjana Shantilal Suryawanshi Vs. Jaiprakash Tulsiram Gupta and another, 2020 ALL MR (Cri) 2926***, wherein it is specifically observed in para 14 as under:-

“14 We notice, however, that no period of limitation has been prescribed for the victim to prefer appeal against the judgment of acquittal in terms of proviso to Section 372 of the Code.”

The said judgment further refers to the case of ***Mohd. Azim Sheikh Ibrahim and others Vs. Mehamuda Anjum Mohd. Azim and another, 2014 ALL MR (Cri) 991***, wherein it was

held that there is no provision of limitation for filing an appeal by the victim under proviso to Section 372 of the Code.

9. Though there is no provision in respect of limitation to prefer an appeal under proviso to Section 372 of the Code, however it appears that the appellant/petitioner had filed the application for condonation of delay under Section 5 of the Limitation Act. Even from this angle, if the case is taken into consideration, he has sufficiently explained the delay in paragraph Nos. 2 and 3 of the application. It appears from the said paragraph Nos. 2 and 3 of the application that due to Covid-19 Pandemic and lock-down, the petitioner has lost track of the matter. It is necessary to mention at this juncture that the period of Covid-19 and the lock-down is a period which no one can forget as there was panic in the entire Nation. The said period has impacted life of every human being and therefore, this fact ought not to have been ignored by the Appellate Court, even otherwise, it was not necessary to file

the application also for condonation of delay. However, as the application was filed by the appellant/petitioner, the Court ought to have adopted the liberal approach. Even otherwise, the complaint was dismissed under Section 256 of the Code and therefore, under such circumstances, the Court ought not to have rejected the application of the appellant/petitioner.

10. Considering the above facts and circumstances of the case, this Court passes the following order:-

- (I) The present Criminal Writ Petition is allowed.
- (II) The order dated 25.07.2024 passed in Misc. Cri. Application No.10/2022 by the learned Additional Sessions Judge, Pusa is hereby quashed and set aside and further the said application is allowed by condoning the delay of 362 days.
- (III) The appeal is restored to its original position.
- (IV) The Appellate Court is directed to register and hear the appeal on merits.

11. Criminal Writ Petition stands disposed of in above terms.

(M. M. NERLIKAR , J.)

Gohane