

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.6625 OF 2013 WITH
CRIMINAL APPLICATION NO.6624 OF 2013

Sunder Sudhakar Ghuge
Age 30 years, Occu. Service,
R/o Naldurg, Tq. Tuljapur,
District Osmanabad

... APPLICANT

VERSUS

Mahesh s/o Wamanrao Pawar
Age major, Occu. Agri.,
R/o Sindhkhed Raja,
Behind Panchayat Samiti,
Sindkhed Raja,
District Buldhana

... RESPONDENT

.....
Shri Shrikishan S. Shinde, Advocate for applicant

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CORAM: A.I.S. CHEEMA, J.

DATED: 9th February, 2015.

ORAL ORDER :

1. Heard counsel for the applicant. He submits that there is delay of 674 days in tendering the Criminal Application under Section 278(4) of the Code of Criminal Procedure. He submits that the delay may be condoned. Counsel is relying on the copy of medical certificate kept at Exhibit A to submit that the father of applicant had undergone surgery in the year 2011

and since then the father of applicant required periodical check up and treatment. For this, the certificate has been filed. According to learned counsel, the father is unable to move due to health problem and one person is required for daily routine of the father. As there is nobody except the applicant to look after the father and due to service conditions of the applicant, the applicant could not approach the Court in time and there has been delay. For such reasons, learned counsel submitted that the delay may be condoned. Learned counsel placed reliance on the judgment of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, reported in AIR 1987 SUPREME COURT 1353 to submit that for condoning delay, "sufficient cause" should be liberally construed. According to him, liberal approach may be taken for condoning the delay.

2. The respondent served, is absent. However, in the present matter, there is inordinate delay. The certificate relied on shows that the father of the applicant was discharged from hospital on 5.1.2011. The cause title of the application shows that the applicant is in service. On being asked, the learned counsel for applicant fairly stated that the applicant is attending his service. In fact, the application itself mentions that as there

is nobody to look after the father and "due to the service conditions of the applicant", the applicant could not approach the Court in time. Thus, the applicant is continuing with his service, but preferred not find time for attending the matter which was filed in the trial Court, which came to be dismissed on 14.12.2011.

3. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & ors., reported in 2013 ALL SCR 3236, where the Hon'ble Supreme Court has laid down the principles to be kept in view for condoning of delay. Paras 15 and 16 of the said judgment read as under :

"15. From the abovesaid authorities the principles that can broadly be culled out are :

(i) There should be a liberal, pragmatic, justiceoriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be

given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :-

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

4. It is clear from the judgment of the Hon'ble Supreme Court that the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. In the present matter, gross negligence on the part of applicant is writ large on the face of record. The applicant has sought delay condonation in a casual manner. It is fanciful to say that day-to-day needs of his father are to be attended and so there is delay of 674 days. This is like saying that for so many days the applicant

has not left the bed side of his father. Such tendency to perceive delay as a non serious matter and casual approach cannot be appreciated so as to hold that there is sufficient cause as contemplated by law to condone the delay. In the present matter, there is inordinate delay which clearly shows gross negligence on the part of the applicant in pursuing the matter. The Trial Courts are burdened with heavy pendency and the present applicant cannot be heard to come after 674 days saying that the delay should be condoned for the reasons as are found in the present matter.

5. Sufficient cause is not there for condoning of the delay. The application stands rejected. Consequently, Criminal Application No.6624/2013 also stands rejected.

(A.I.S. CHEEMA, J.)