

CRIMINAL WRIT PETITION NO.595 OF 2015

Mr.S.A.Inamdar for the Petitioner.  
Mr.H. Rahman for Respondent No.1.  
Mr.A.R.Patil, APP. for Respondent No.2.

PC:

Rule.

2) Rule made returnable forthwith. Heard finally with the consent of the parties.

3) By this petition the original complainant seeks to challenge an order passed by the learned Sessions Judge dated 29 January 2015 in Misc. Application No.3619 of 2014. By the impugned order the learned Sessions Judge has dismissed the application for condonation of delay in preferring the revision.

4) The brief facts are that the petitioner had filed complaint under Section 499, 500 of

Indian Penal Code against respondent No.1 before the Metropolitan Magistrate. That complaint was dismissed by an order dated 12th August 2014. The learned Magistrate had found that there was no case made out for issuance of process. It appears that the petitioner sought to challenge the said order before this court in Criminal Writ Petition No.4296 of 2014. This court passed the following order in the matter on 20 November 2014.

“Heard. By this petition, the petitioner wants to assail an order passed by trial court dismissing his complaint made for offences under Sections 499 and 500 of the IPC after taking into consideration the report received from I.O. The effect of the impugned order of being putting an end to the proceedings intended to be initiated, the petitioner has efficacious remedy available by way of filing an application in revision. In view of this, learned counsel for petitioner seeks leave to withdraw the petition

with liberty to file an appropriate application in revision before the Sessions Court. Leave granted. The petition is disposed of as withdrawn with the liberty as prayed for."

5) It is thereafter that the petitioner approached the learned Sessions Court with an application for condonation of delay. According to the petitioner delay was of 21 days. Learned Sessions Judge by the impugned order has rejected the said application refusing to condone the delay. It is this order against which the petitioner has now approached this court.

6) I have heard the learned counsel for the petitioner and the 1st respondent as also learned APP for the 2<sup>nd</sup> respondent-State.

7) It is submitted by the learned counsel for the applicant that the applicant was prevented on account of financial difficulties as also the delay had occasioned on account of the fact that the petitioner had approached this court initially. It is submitted that the

learned Sessions Judge has erred in refusing to condone the delay on a hyper technical reason. On the contrary it is submitted by the learned counsel for the 1<sup>st</sup> respondent that there was a letter addressed by the son of the present petitioner on 17 January 2013 which was relied upon by the petitioner. Relying on the contents of the letter (Para 8 thereof), it is submitted that the letter shows that the financial condition of the petitioner was not such which could have prevented him from filing the revision application within time. Even so far as the second ground on which the learned Sessions Judge has refused to condone the delay is concerned, it is submitted that the petitioner has failed to produce copy of the order passed by this court in Criminal Writ Petition. It is submitted that the learned Sessions Judge has rightly found that the petitioner has failed to make out any sufficient cause for not filing the revision application within time. It is submitted that in the absence of any perversity in the impugned order no interference is called for. Learned counsel for the respondent has placed reliance on the case of Brijesh Kumar and ors. Vs. State of Haryana and ors. vs. State of

Haryana and ors. reported in AIR 2014 SC 1612 in support of his submissions.

8) I have considered the rival circumstances and the submissions made. There cannot be any manner of dispute with the proposition that existence of "sufficient cause" is a condition precedent for exercise of discretion by the court in condoning delay. The Hon'ble Supreme Court in Para 11 of the Judgment in the case in Brijesh Kumar (supra) was held as under:-

"The court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. However, the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bonafides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for

exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone".

Thus, it can be seen that the court cannot condone the delay on sympathetic ground alone (Para 9). Turning to the present case, the delay is said to be of about 21 days. It is not in dispute that the petitioner had approached this Court in Criminal Writ Petition No.4296/2014. It was allowed to be withdrawn with liberty to approach the Sessions Court. It is, thereafter, that the petitioner had filed the revision application along with application for condonation of delay. I find that apart from Section 5 of the Indian Limitation Act, 1963, the time taken in prosecuting the remedy before this court can also be excluded on principles underlining Section 14 of the Indian Limitation Act, 1963.

9) The Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag vs. Katiji** reported in AIR 1987 S.C. 1353 had inter alia held that the Court has to take a pragmatic view in the matter of condonation of delay and it is always advisable that the matters are decided on merits rather than on technicalities. It is also held that there is no presumption that the delay is intentional.

10) Perusal of the impugned order passed by the learned Sessions Court shows that even the Sessions Judge has noticed that the court should take liberal view in the matter. The word "sufficient cause" has to be interpreted in a meaningful manner, so as to advance substantial justice. On over all consideration of the circumstances, I do not find that the delay is negligent or there is lack of diligence on the part of the petitioner. In such circumstances, writ petition is allowed. The delay in filing the revision application is condoned. The learned Sessions Judge shall get the revision registered and shall decide it on merits in accordance with law.

11) Rule is made absolute in the aforesaid terms with no order as to costs.

( C.V. BHADANG, J.)