

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.246 OF 2015

Sandeep Ratilal Damania .Applicant

v/s.

Bomi Bahadur Mistry & anr. .Respondents

Mr.P.N.Vira, Advocate, for the Applicant

Mr.Mangesh Patel, Advocate, for the Respondent
No.1

Mr.J.H.Ramugade, APP, for the Respondent No.2 –
State

CORAM : SMT.ANUJA PRABHUDESSAI, J.

DATE : 15.10.2015

P.C.

. By this application, the applicant has sought to condone the delay of 465 days in filing an application for leave to file appeal challenging the Judgment dated 04.10.2013 passed by the learned Metropolitan Magistrate, 14th Court, Girgaum, Mumbai in C.C.No.325/SS/2009.

2. Learned counsel for the applicant submits that the respondent No.1 was accused

No.5 in C.C.No. 325/SS/2009 and that he was acquitted by the learned Magistrate for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Learned counsel for the applicant further submits that the accused Nos.2 & 4 in the said case were convicted and that they had filed a revision application before the Sessions Court. Learned counsel for the applicant submits that the said revision application has been allowed by the learned Sessions Judge. He contends that the applicant was under the impression that he would get justice in the said revision application and that he did not file an application for leave to file an appeal within time in order to avoid multiplicity of proceeding and also to avoid cost of litigation.

3. Learned counsel for the respondent No.1 submits that the delay is gross and in-ordinate.

He further submits that the reasons stated do not constitute sufficient cause to condone the delay.

4. I have perused the papers and considered submissions advanced by the learned counsel for the respective parties.

5. At the outset, it must be mentioned that in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649***, the Apex Court has reiterated the principles laid down in the earlier decisions and added some guidelines, which are as under :

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

i) There should be a liberal, pragmatic, justice oriented, 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 in 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."

6. In the instant case, the only reason given for condoning the delay of 465 days is that the co-accused, who were convicted had filed a revision application before the Sessions Court. It is to be noted that the respondent herein, who was the accused No.5 in the said case was acquitted by the Magistrate's Court. No proceedings were filed against the respondent No.5 before this Court or the Sessions Court. Hence the applicant/complainant could not have got any relief. The reasons stated in para 6 do

not constitute sufficient grounds or are not sufficient to condone the delay of 465 days which is gross and in-ordinate. Needless to state that the valuable right accrued in favour of the accused No.5 cannot be taken away on such a casual plea.

7. The Application has no merits and is dismissed.

(ANUJA PRABHUDESSAI, J.)