

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

CRIMINAL APPLICATION NO. 406 OF 2015

Navachaityanaya Nagri Sahakari
Patsanstha, Atit, Tal. & Dist. Satara .. Applicant

v/s.

Prakash Yashwant Mane ..Respondent

Mr. K.U. Patil for the applicant
Mr. R.C. Barge for respondent no.1
Mr. Rajesh More, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 22nd SEPTEMBER, 2015.**

P.C.

1. Heard the learned Counsel for the applicant. By this application, the applicant has sought to condone the delay of 3 years and 115 days delay in filing the application for leave to appeal.

2. 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 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.

3. In the instant case, in paragraph 2 of the application, it is stated that the applicant-society had obtained the certified copy of the judgment and had approached their advocate at Mumbai. It is further stated that the advocate at Mumbai had prepared a draft of the Criminal Application and sent it to the applicant-society for affirmation and after affirming the same, the society had sent it back to the concerned advocate at Mumbai. The applicant has stated that the concerned advocate had failed to file the Criminal Application before the Court and that they were under a bona-fide impression that the case was filed and pending before the Court. It is stated that the since there was no communication from their

advocate, they made an attempt to communicate with their advocate and inquired about the status of the case. On further inquiry, they were informed that inadvertently the advocate had failed to file the criminal application in this Court.

4. A perusal of the application does not mention the date on which the society had obtained the certified copy. It also does not mention the dates on which it was resolved to file the Criminal Application or further dates as to when the draft application was prepared by the concerned advocate and when it was affirmed by the applicant society. It does not mention the name of the concerned advocate who had failed to file the said application. The reasons stated in the application, do not constitute sufficient cause. The inordinate delay in filing the application reflects gross negligence on the part of the applicant and under the circumstances, it would be unreasonable to take away the right accrued in favour of the respondent on the mere asking of the applicant, particularly when the delay is directly result of

negligence or inaction of the applicant.

5. Under the circumstances and in view of the discussion supra, the application for condonation of delay is dismissed.

(ANUJA PRABHUDESSAI, J.)

Certificate

Certified to be true and correct copy of the original signed
judgment / order.