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

CRIMINAL APPLICTION (APPP) No.183 OF 2015.

Rajesh s/o Pandurang Jogi and another.

-Vrs.-

State of Maharashtra, thr. P.S.O. Sakkardhara P.S., and another.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.G. Joshi, counsel for petitioner.

Mr. Rao, AGP for respondent no. 1.

Respondent no. 2 Mr. S.M. Ukey, in person

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 21st OCTOBER, 2015

We find that a Criminal Application No. 419/2010 was dismissed for want of prosecution on 7.7.2011. It was sought to be restored by moving Criminal Application No. 182/2015 on 15.2.2015. Delay in excess of three years is sought to be condoned by moving Criminal Application No.182/2015. Delay condonation is strongly opposed by respondent no. 2 who appears in person.

Learned counsel for applicant states that Criminal Application No. 419/2010 was admitted for final hearing and as yet investigation is going on. Therefore, by delay no prejudice is caused to respondent no.2.

Respondent no.2 states that in a pending civil matter the dismissal of Criminal Application No. 419/2010 was pressed into service by him and therefore the applicants had

knowledge of that dismissal in 2012 itself. He further states that even while disposing of Criminal Application No. 157/2014 moved by these applicants, this Court has asked certain questions about orders in Criminal Application No. 419/2010. Criminal Application No. 157/2014 was disposed of on 23.6.2014 and present criminal application has been filed on 16.2.2015. He argues that this delay has not been satisfactorily explained.

Perusal of application moved for condonation of delay shows that till paragraph 4 events leading to passing of conditional order by this Court on 7.7.2011 in Criminal Application No.419/2010 are disclosed and then it is mentioned that applicants were not aware of dismissal of Criminal Application No. 419/2010. It is thereafter mentioned that the applicants tried to make inquiry from junior colleague of the advocate and then learnt about dismissal of application for non-removal of office objections.

In paragraph 5 it is mentioned that thereafter applicants collected papers from earlier counsel and thereafter present proceedings have been filed. Dates on which this was done or reason for which matter was dismissed in default or why objections could not be removed is not disclosed.

According to advocate Joshi, charge sheet runs into 1000 pages and its legible typed copies were required to be filed. Accordingly, the applicants supplied the copies but still office found about 80 pages not legible. As those copies could not be supplied, the matter came to be dismissed in default.

He further submits that now legible copies are

available and second set has also been supplied.

The application for condonation of delay does not disclose the events with reference to relevant dates. Contention of respondent no. 2 that dismissal was pointed out way back in 2012 is not in dispute. Order of this court in Criminal Application No.157/2014 dated 26.3.2014 is not in dispute. On that date, Court had asked question about status of Criminal Application No.419/2010 to the present counsel for applicants.

Reference to all these relevant facts or necessary clarification are missing in the application for condonation of delay.

In this situation, we find that as delay has not been properly explained, we cannot look into merit of the controversy.

As and when investigation is over and further steps are taken by prosecution, law permits applicants to move appropriate application seeking discharge.

Hence, we find that in present circumstances, delay cannot be condoned and no further orders are warranted. Criminal application is rejected.

JUDGE

JUDGE