

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.635 OF 2016

GOVIND TUKARAM SARJE AND OTHERS

PETITIONERS

VERSUS

MUKTA W/O GOVIND SARJE

RESPONDENT

Mr.R.D.Biradar h/f Mr.B.M.Dhanure, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/06/2016

PER COURT :

1. The petitioner is aggrieved by the order dated 05/03/2016 passed by the learned Additional Sessions Judge, Parbhani by which the application of the respondent seeking condonation of delay of about 18 to 19 months has been allowed.

2. Learned Advocate for the petitioners strenuously criticizes the impugned order. Grievance is that an inordinate delay of about 19 months has been allowed. Ground for condonation is that the respondent was suffering from depression as she had failed in her Criminal Misc. Application No.111 of 2011 filed under the protection of Women from Domestic Violence Act, 2005. Sufficient reasons were not assigned. Medical reports were not placed on record. In the

absence of evidence, the impugned order could not have been passed.

3. It is further submitted that the respondent has commenced multiple litigation for harassing the petitioner. She has herself deserted the petitioner. The children born out of the wedlock are living with the petitioner father. Her complaint u/s 498(A) has also been rejected. It is, therefore, submitted that the impugned order deserves to be quashed and set aside.

4. I have considered the submissions of the learned Advocate.

5. There is no dispute that the wife had invoked the jurisdiction under the Act of 2005 on account of the illtreatment, sufferings purportedly caused by the petitioner. Grounds set out for condonation of delay is that, being a destitute lady, she suffered depression on account of having lost the case before the Trial Court. The learned Additional Sessions Judge has allowed the application for condonation of delay on the ground that the doors of the Court would be closed for the respondent if the delay is not condoned.

6. It is trite law that in matters of condonation of delay, unless laches are attributed to the conduct of a litigant and unless the delay is

inordinate and / or deliberate, a liberal view has to be taken. It is settled law that the Court should take a pragmatic view in such matters rather than taking a pedantic view.

7. The Hon'ble Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] has noted in paragraph No.3 as under :-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact

he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

8. In the light of the law applicable and the facts of this case, I do not find that the delay caused by the respondent can be said to be either inordinate or deliberate. She gains no advantage by delaying her own matter. No laches have been attributed to her conduct. The ground set out by the respondent/wife is probable and in such cases, the learned Additional Sessions Judge has rightly adopted a pragmatic approach.

9. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore dismissed.

(RAVINDRA V. GHUGE, J.)