

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1132 OF 2015

Dr. Nilesh S/o Shivratan Porwal,
Age : 35 years, Occu. : Medical Practitioner,
R/o. Porwal Diagnostic Centre,
Gavane Corner, Parbhani,
Tq. and Dist. Parbhani .. Petitioner

Vs.

The Appropriate Authority-cum-
Deputy Municipal Commissioner,
Municipal Corporation, Parbhani,
Tq. and Dist. Parbhani .. Respondent

Mr. V.S. Kadam, Advocate for the petitioner
Mr. Satyajit Bora, Advocate for the respondent

CORAM : V.K. JADHAV, J.
DATE : 25/10/2016

ORAL ORDER :

Heard finally with consent of the learned
counsel for the parties.

2. The petitioner is accused in R.C.C. 15 of 2015,
pending before the learned Judicial Magistrate First
Class, Court No.1, Parbhani. On the basis of the
complaint filed by the respondent, the learned Judicial
Magistrate First Class, Court No.1, Parbhani has issued
process against the petitioner for having committed the

offences punishable under section 5, 23 and 29 of the Pre-Conception and Pre-natal Diagnosis Techniques (Prohibition of Sex Selection) Act, 1994. Being aggrieved by the said order of issuance of process, the petitioner, who is original accused, has filed Criminal Writ Petition No. 518 of 2015, challenging thereby the legality and validity of the complaint bearing R.C.C. 15 of 2015 alongwith the order dated 15/1/2015, issuing process against the petitioner. Even this Court has granted ad-interim relief in terms of prayer clause (C) on 07/05/2015 when the said Criminal Writ Petition bearing No. 518 of 2015 came to be withdrawn by the petitioner with liberty to file Criminal Revision Application before the Sessions Court. The petitioner has thereafter filed Criminal Misc. Application No.67 of 2015 for condonation of delay, since there was delay caused in filing the Criminal Revision Application. However, the learned Additional Sessions Judge, Parbhani, by impugned judgment and order dated 18/8/2015 dismissed the Application for condonation of delay. Hence, this Writ Petition.

3. Learned counsel for the petitioner submits that though the learned Additional Sessions Judge, Parbhani

has considered the delay of the period when the criminal Writ Petition was pending before this Court, however, rejected the application for condonation of delay on the ground that the subsequent delay of 45 days in filing Criminal Revision Application is not satisfactorily explained. Learned counsel submits that during the same period, the petitioner went to Mumbai at Parel Midtown Diagnostics for training and observership in MRI and CT Scan. Consequently, the petitioner could not approach his Advocate at Parbhani. Learned counsel submits that the petitioner is therefore prevented from sufficient cause, to prefer the Criminal Revision Application within time.

4. Learned counsel for the respondent/original complainant submits that the petitioner has not at all explained the delay of 45 days, in filing Criminal Revision Application, before the Sessions Court. Learned counsel submits that on 19/6/2015, the petitioner has withdrawn Writ Petition no. 518 of 2015 with liberty to file Revision Application before the Sessions Court. However, the petitioner has filed Criminal Misc. Application alongwith application for condonation of delay on 3/8/2015. Thus, there is delay of 45 days in

filing Criminal Revision Application before the Sessions Court and the same is not satisfactorily explained by the petitioner. Learned counsel submits that so far as the ground raised in the present writ petition, as to the training attended by the petitioner during that period, was not taken up before the Sessions Court and, therefore, the Criminal Writ Petition is liable to be dismissed.

5. It appears that there is delay of 45 days in preferring the Criminal Revision Application before the Sessions Court. After withdrawal of the Criminal Writ Petition, the petitioner should have preferred Criminal Revision Application forthwith before the Sessions Court. However, it appears from the certificate produced before this Court, that the petitioner had done observership in the Midtown Diagnostics Pvt. Ltd., Mumbai during the period of 6/7/2015 to 22/7/2015. Under these circumstances, it was not possible for the petitioner to approach his Advocate at Parbhani and prefer the Criminal Revision Application before the Sessions Court. It appears that the petitioner is prevented from certain cause to prefer Criminal Revision Application before the Sessions Court within time.

However, it also appears that the petitioner is not diligent to prefer the Criminal Revision Application before the Sessions Court within time. The petitioner has challenged the order of issuance of process. Thus, let Criminal Revision Application be decided on merits, however, the petitioner is required to be saddled with costs. Hence, the following order:-

ORDER

(I) Criminal Writ Petition is hereby allowed.

(II) The impugned judgment and order dated 18/8/2015 passed by the learned Additional Sessions Judge, Parbhani in Criminal Misc. Application No.67 of 2015 is hereby quashed and set aside.

(III) Criminal Misc. Application No.67 of 2015 is hereby allowed with costs of Rs.5,000/- (Rs. Five Thousand), to be deposited to the High Court Advocates' Bar Association Library, Aurangabad and receipt thereof be produced before the learned Additional Sessions Judge, Parbhani.

(IV) On production of the receipt of the costs, as aforesaid, the learned Additional Sessions Judge,

Parbhani to decide Criminal Revision Application on its own merits.

6. Criminal Writ Petition is accordingly disposed of.

[V.K. JADHAV]
JUDGE

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