

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6152 OF 2015
IN
CRIMINAL APPLICATION NO. 6151 OF 2015

Mohan S/o Motiram Khod .. Applicant

Versus

The State of Maharashtra & Ors. .. Respondents

.....
Mr N. L. Jadhav, Advocate for the applicant
Ms Priti Diggikar, APP for respondent/State
Mr H. V. Tungar, Advocate for respondents No. 2 and 3
.....

CORAM : V.L. ACHLIYA, J.
DATED : 06.10.2016.

PER COURT:

1. By the present application, the applicant is seeking condonation of 1635 days delay in filing the application seeking leave to file appeal.

2. Mr. N. L. Jadhav, learned counsel for the applicant submits that, the delay was not intentional and deliberate. It was due to wrong advice given to the applicant to file appeal before the Sessions Court. Acting on the

wrong advice, the applicant has preferred appeal before the Sessions Court which was registered as Criminal Appeal No. 60/2012. After condoning the delay, the appeal was registered. Later on the appeal was also admitted by order dt. 27.7.2012. However, vide Judgment and Order dt. 25.03.2015, the Sessions Court has dismissed the appeal on the ground that the appeal preferred by applicant is not maintainable before the Sessions Court against the impugned judgment & order of acquittal passed by trial Court. In this view, the applicant has approached this Court and filed appeal along with application seeking leave to file appeal. There is a delay of 1635 days in filing appeal. In this background, the learned counsel submits that, there is a good case to condone the delay in filing the appeal as the applicant has chosen wrong forum & in the intervening period the appeal was pending before Sessions Court.

3. Respondent Nos. 2 and 3 have filed affidavit-in-reply and strongly objected to condone the delay.

4. Mr H. V. Tungar, learned counsel for respondents No. 2 and 3 pointed out that, the original case i.e. private complaint itself filed after four years of the incident and that too as counter blast to the complaint lodged by

respondent No. 3. Respondent No. 3 lodged complaint on 22.07.2003 with Police Station, Beed Rural, as against applicants. Pursuant to said complaint, offence under Sections 147, 148, 325 & 506 of the Indian Penal Code came to be registered with Police Station, Beed against applicant vide C.R. No. 239 of 2003. While the applicant along with others were facing prosecution, they filed private complaint case against the applicant. The complaint was filed in the year 2007 i.e. after four years of incident. Against the judgment and order of acquittal passed in the matter on 25.3.2015, the appeal was filed on 15.11.2015 i.e. after the delay of more than three months. After condonation of delay, the appeal was registered. After the disposal of appeal, immediately thereafter no appeal preferred within time. The appeal along with the present application have been filed on 15.11.2015 i.e. after the period of more than 8 to 9 months & again prayed for condonation of delay. He has, therefore, submitted that the conduct of the applicant throughout reflects that he has acted in a very casual & negligent manner in institution of the criminal proceedings one after another. No sufficient cause has been assigned to condone the delay of 1635 days. He has further submitted that, the present application is filed with an ulterior motive to harass the respondents.

5. Having appreciated the submissions advanced in the light of the record and proceedings, I am of the view that, no sufficient cause has been shown to condone the delay. No doubt, the applicant was prosecuting the proceedings before the other forum & filed appeal before the wrong forum. But this alone cannot be a cause to condone the delay. It is pertinent to note that, the private complaint in respect of incident dt. 27.8.2003 was filed on 13.08.2007 i.e. after four years after the incident. Against the judgment and order of acquittal, the appeal was filed before the Sessions Court which was again delayed by more than 3 months. After the dismissal of appeal by the Sessions Court on the ground of maintainability, the present appeal is filed after a period of more than 8-9 months which reflects casual approach on the part of the applicant to prosecute the criminal proceedings. In this view, I am not inclined to entertain the request to condone the delay of 1635 days. In the result, the application is rejected.

6. While hearing the appeal, it was noticed that the applicant has filed the application seeking condonation of delay without mentioning the number of days in filing the application. In the prayer clause 'B', the space has been left blank. Still no office objection was raised. It appears from the record that the concerned officials from the Registry of this Court, who made

scrutiny of application, recorded that the application found to be in order. Section Officer, who scrutinized the appeal, has mentioned in the order sheet that there is a delay of 1635 days though no such statement made in the application. It is further noticed that, though the application for condonation of delay has not been allowed, the officials of the Registry of this Court has registered the application seeking leave to file appeal. This reflects the negligence & casual approach on the part of the concerned officials from the Registry to scrutinize the proceedings. In this view, the matter needs to be considered on administrative side by the Registrar (Judicial) so as to avoid repetition of such instances. I, therefore, direct Registrar (Judicial) to examine the record and take appropriate measures to avoid such instances.

[V. L. ACHLIYA]
JUDGE