

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 145 OF 2016
IN
STAMP NUMBER MAIN NO. 2034 OF 2016

MR. QUEROBINO C. DIAS. ... Applicant
Versus
FATHER ALOYSIUS JOSEPH FURTADO AND ... Respondent
3 ORS.

Adv. D. Fadke holding for Adv. Galileo Francisco Teles for the Applicant.

Coram:- C. V. BHADANG, J.

Date:- 14th September, 2016

.C.:

This is an application for condonation of delay of 880 days in filing a criminal appeal against acquittal.

2. The applicant, who is the original complainant had filed a private complaint before the learned Chief Judicial Magistrate at Panaji which was registered as Criminal Case No.IPC/140/2004/A. The petitioner alleged commission of offences by the respondent nos.1,2 and 3 under sections 415,416, 419, 463,468 r/w 120-B IPC. It appears that the said complaint was dismissed for non prosecution/default on 22/11/2013. The petitioner challenged the same in Criminal Revision application no.30/2015 before the learned Addl. Sessions Judge, Panaji. A perusal of the record shows that in

filing the said criminal revision application also there was a delay of approximately 146 days, which was condoned by the learned Sessions Judge. Ultimately the petitioner sought to withdraw the criminal revision application on the ground that the impugned order amounts to an acquittal and therefore, is amenable to challenge in appeal. The petitioner, therefore, sought leave to challenge the said order in appropriate proceedings. The learned Sessions Judge by an order dated 3/3/2016, has dismissed the revision application as withdrawn. Thereafter, the petitioner has filed the present application on 27/6/2016 seeking condonation of 880 days' delay.

3. I have heard the learned counsel for the applicant and the learned Public Prosecutor for respondent no.4. None appears for respondent nos. 1,2 and 3, though served.

4. It is submitted by the learned counsel for the applicant that the applicant was regularly attending the hearing of the complaint till 5/10/2013 and his advocate had informed about the next date of hearing as 22/11/2013. The applicant was under a bonafide belief that his advocate would appear on the next date and proceed with the matter. Somewhere in June 2014 the applicant approached the advocate to inquire about the status of his case when it was learnt that the advocate had failed to appear on behalf of the applicant and was unaware about the next date.

5. According to the applicant, he learnt about the dismissal of the complaint on 9/6/2016 and thereafter applied for the certified copy of the order which was ready on 11/6/2014 and was delivered on 20/6/2014. Thereafter, he bonafidely prosecuted the criminal revision application before the learned Sessions Judge. After the withdrawal of the criminal revision application, the applicant was unable to file the criminal appeal on account of financial constraint. It is contended that the applicant is suffering from high blood pressure, diabetes and it was difficult to meet the advocate and to arrange for funds. It took about three months to arrange for funds and thereafter he approached his advocate on 6/6/2016, when he was directed to apply for certified copy of the order of the learned the Chief Judicial Magistrate. The said copies were obtained on 17/6/2016 and the application was ultimately filed on 27/6/2016. It is submitted that the delay is neither intentional nor out of any negligence and therefore deserves to be condoned.

6. The learned Public Prosecutor has submitted that this Court may pass appropriate orders.

7. I have considered the circumstances and the submissions made and I do not find that the applicant has made out any sufficient cause for condonation of the delay. It appears that as the complainant failed to remain present before the Chief Judicial Magistrate and to take steps for service of the respondents. The order sheet dated 5/10/2013

shows that the original accused no.2 has expired while accused no.3 has already been discharged. On 22/11/2013 on account of the absence of the applicant the complaint was dismissed for want of prosecution/default. The petitioner did not take steps for challenging the said order promptly and even when the petitioner approached the learned Sessions Judge there was a delay of about 146 days. Even after the revision application was withdrawn on 3/3/2016, the present application is filed on 27/6/2016 on the spacious ground of financial difficulty and medical ground. The application is not supported by any medical certificate. I find from the record that the petitioner has not acted diligently both in prosecuting the complaint and/or in challenging the impugned order. In such circumstances, no case for condonation is made out. In the result the criminal application is dismissed. Consequently the registration of stamp no.2034/2016 and stamp no.2035/2016 stands refused.

C. V. BHADANG, J.

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