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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2247 OF 2014

Gulab N. Herani

..Petitioner

Vs.

Boman Rustom Irani (Director) M/s Keystone
Realtors Pvt. Ltd. & Ors.

..Respondents.

Mr. R.V. Gupta for Petitioner.

Mr. Mihir Gheewala a/w Ishan Jain for Respondent Nos.1 and 2.

Mr. Deepak Thakare, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 16th April 2016.

P.C.

1 By the present petition, the petitioner has challenged the order dated 16.4.2014 passed by the Additional Sessions Judge, Borivali Division, Dindoshi in in Misc. Application No.122 of 2013 thereby rejecting the application for condonation of delay of 80 days in preferring the Revision Application against the impugned Judgment and Order dated 22.4.2013 passed below Exhibit 1 in CC No.35/M/2009.

2 The petitioner is the original complainant in CC No.35/M/2009. The Trial court by its order dated 8.4.2010 passed under Section 156(3) of Cr.

P.C. directed the concerned Police to investigate into the complainant. After completion of investigation, the police have submitted “B-Summary” report dated 11.2.2013 on 14.2.2013. The learned Metropolitan Magistrate, 68th Court, Borivali, Mumbai by its Order dated 22.4.2013 accepted “B-Summary” report and was pleased to dismiss the complaint under Section 203 of Cr. P.C filed by the petitioner. The petitioner preferred revision application against the said impugned Order dated 22.4.2013 passed by the Trial Court. As there was 80 days delay in preferring the said revision application, the petitioner also filed application for condonation of delay. The learned Additional Sessions Judge, Borivali Division, Dindoshi by its Order dated 16.4.2014 rejected the said application for condonation of delay on the ground that the petitioner has failed to give sufficient cause or proper explanation for condoning the delay caused in filing the revision application. The Revisional Court also held that the reason of illness stated by the petitioner in the application does not appear to be proper and satisfactory and the certificate issued by the Doctor, is after the expiry of period of limitation. The Revisional Court also came to the conclusion that the petitioner herein has not made out any case for condonation of delay in preferring the revision application.

3 Heard the learned Counsel for the petitioner and the learned Counsel for the respondent Nos.1 and 2. The learned Counsel for the respondent Nos.1 and 2 vehemently opposed the present petition and submitted that the petitioner with a view to harass the respondents, has preferred the said revision application. That the police after investigating the allegations made by the petitioner have submitted appropriate report before the learned Magistrate thereby seeking classification of the crime as “B-Summary” by filing the report. He submitted that the petitioner though has claimed that he is suffering from heart ailment from 2004, has filed the present complaint in the year 2009 and therefore it cannot be said that the petitioner is serious enough and was prevented from approaching the Revisional Court. He lastly submitted that the petition being devoid of any merits be dismissed.

4 I have perused the medical certificate dated 24.9.2013 issued by the Cardiologist mentioning therein that the petitioner was suffering from severe primary pulmonary hypertension and was under treatment. There is another medical certificate annexed to the present petition at page-50 of the same Cardiologist wherein it is reiterated the earlier ailment being suffered by the petitioner. In addition thereto, hospitalisation of the petitioner due to “severe heart failure and Peri-cardial effusion that required intensive prolonged therapy”.

5 After taking into consider the facts mentioned in the petition and after perusing the medical certificates annexed to the petition, I am inclined to allow the present petition thereby condoning the delay in preferring the Revision Application filed before the Revisional Court subject to condition that the petitioner shall pay the costs of Rs.5000/- to the Maharashtra Legal Aid Committee within four weeks from today. If the petitioner fails to deposit the said amount within the stipulated period, the order dated 16.4.2014 passed by the Revisional Court shall come into effect.

6 The petition is allowed in the aforesaid terms.

(A.S. GADKARI,J.)