

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.3005 OF 2014

Dr. Sheetal Sameer Rane & Ors. .. Petitioners  
-Versus-  
State of Maharashtra & Ors. ..Respondents

Mr. Datta Mane with Prasad Patil i/b. P.M.Havnur for petitioners  
None for respondent  
Mrs. V.R.Bhonsale, APP for State.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.  
DATE : 22<sup>nd</sup> February 2016.

P.C.

1] By this petition, the petitioners who are original accused in C.C.No.355 of 2011 pending on the file of J.M.F.C. Vashi are challenging the order passed by the Additional Sessions Judge, Thane in Criminal M.A.No.244 of 2012, on 15<sup>th</sup> April 2014, thereby, rejecting petitioners' application for condonation of delay in preferring the revision challenging the order of issuance of process.

2] The submissions of learned Counsel for the petitioners is that the petitioners are having a very good case on merits so as to challenge the issue process order against them by JMFC Vashi for the offences punishable under sections 141, 146, 147, 324, 336, 337, 338, 351, 352, 355, 406, 451, 451, 452, 498, 406(2) read with 120-B of the Indian Penal

Code. Hence, earlier they have preferred the criminal revision No.257 of 2012 before this court challenging the issue process order. The said revision was preferred in time but thereafter, it was withdrawn on 20<sup>th</sup> April 2012, seeking the permission of the court with liberty to avail of the remedy before the Sessions Court. Accordingly, the petitioners preferred the revision before the sessions court. However, as there was delay of 249 days in preferring the revision application, they, filed application for condonation of delay bearing Criminal M.A.No.244 of 2012. They had also given sufficient reasons for the delay caused in preferring the revision. The learned Sessions Judge, however, vide his impugned order rejected the said application finding that the delay is not satisfactorily explained.

3] It is urged by the learned Counsel for the petitioners that along with the application for condonation of delay, the petitioners had filed necessary medical certificates to prove that the petitioners were unable to approach the sessions court in time. Despite that, the learned Sessions Court has ignored those medical certificates, not properly appreciated the cause shown by the petitioners and rejected the application for condonation of delay as a result of which the petitioners have lost an opportunity of challenging the impugned order of issue process against them.

4] The notice of this petition was issued to respondent No.2. The respondent No.2 has appeared in the matter through an Advocate but then since, the last few dates like from 20<sup>th</sup> October 2015 none was present on behalf of the respondent No.2. However, in order to give a fair opportunity the matter was adjourned to 23<sup>rd</sup> December 2015 and, thereafter, from time to time till today. Today also none is present on behalf of the respondent No.2.

5] I have heard the learned Counsel for the petitioners and perused the impugned order passed by the sessions court and also the documents which were annexed along with the application for condonation of delay.

6] Needless to say that the words “sufficient cause” as used in section 5 of the Limitation Act are to be construed liberally so as to give an opportunity to the parties to fight their case on merit. As long as there is no negligence on the part of the petitioners and the cause shown for the delay does not lack bonafides, the delay deserved to be condoned. The law is also well settled that the primary function of the court is to adjudicate the dispute between the parties on merit so as to advance substantial cause of justice. Rules of limitation as is well settled are not

meant to destroy the rights of the parties but only to ensure that parties do not resort to dilatory tactics and seek their remedies promptly.

7] In the instant case, though there is substantial delay on the part of the petitioners to challenge the issuance of process, the facts of the case disclose that there was sufficient cause for them to do so. In the first place they had challenged the order of issue process in the High Court and, therefore, whatever period was taken in pursuing the remedy in the High Court, may be that remedy is not legal and proper, but has taken pursuant to good faith, needs to be excluded from consideration of limitation, under section 14 of the Limitation Act.

8] Even as regards the remaining period, which the petitioners took in approaching the sessions court, i.e. from 20<sup>th</sup> April 2012 to 18<sup>th</sup> October 2012, the petitioners have given sufficient cause. It is stated by them that the petitioner No.1 Dr. Sheetal is a Doctor by profession and also a student of P.G. Course. She was to appear for examination and hence, she could not further the matter. The relevant documents to show that the petitioner No.1 actually was undergoing the process of examination are produced on record. As regards, the petitioner No.2, ground given was that he is senior citizen aged about 68 years and suffering from various ailments. The Doctor has advised him surgery. The medical

certificate to that effect are also filed on record. In respect of petitioner No.4, Pankaj it is stated that on account of birth in the family and due to some other work, he could not follow up the matter with the Advocate. The relevant birth certificate is filed on record. As to the gynaec problem and surgery also the relevant documents are produced on record.

9] Thus, the perusal of these documents which are medical certificates go to reveal that there was sufficient cause for delay for the petitioners in approaching the sessions court by way of revision challenging the order of issue process. As per the well settled position of law, the petitioners are not to explain day to day delay caused in prosecuting any remedy. Whatever delay is caused they have to give sufficient cause and on perusal of certificates and papers produced by the petitioners herein, it cannot be denied that there was sufficient cause for the petitioners for the delay in approaching the sessions court. In view thereof, the petition is allowed. The impugned order passed by the Additional Sessions Judge, Thane rejecting Criminal M.A.No.244 of 2012 for condonation of delay in preferring the revision is hereby quashed and set aside. Ad-interim relief, if any, stands vacated.

(JUDGE)