

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3688 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 3692 OF 2015
CRIMINAL WRIT PETITION NO. 3694 OF 2015
CRIMINAL WRIT PETITION NO. 3696 OF 2015
CRIMINAL WRIT PETITION NO. 3697 OF 2015
CRIMINAL WRIT PETITION NO. 3695 OF 2015

M/s. Gavde Finance Ltd.	...	Petitioner
vs.		
The State of Maharashtra & Anr.	...	Respondents

Mr. B.P.Pandey i/b. Mr. V.B.Pandey, Advocate for the petitioner.
Mr. Arjun Srivastava i/b. M/s. Desai & Diwanji for respondent No.2.
Mr. A.R.Patil, APP, for the State.

CORAM: RAVINDRA V.GHUGE, J.
DATE : 11th July, 2016.

P.C.

1. The first five Petitions have already been admitted by this Court by order dated 25.1.2016. Further proceedings before the learned Sessions Court in the Revision Applications have been stayed. The learned Advocates for respective sides point out that the hearing of these Petitioners has been expedited.

2. As such, this last Petition bearing No.3695 of 2015 is also admitted and all these matters are taken up for final hearing with the consent of the parties. Respondent No.2 is the contesting party in all these matters.

3. The learned Advocate for the petitioner has strenuously criticized the impugned order by which the Revisional Court has condoned the delay of about 628 days caused in filing of the Criminal Revision Applications by the respondents. By the impugned order, Misc. Application No.1792 upto 1797 of 2015 have been allowed and the delay has been condoned by imposition of costs of Rs.2,000/- each.

4. Learned Advocate for the petitioner submits that process was issued on 16.4.2013 by the learned Magistrate on a complaint filed by the petitioner under Sections 138 and 141 of the Negotiable Instruments Act, 1881. All the accused, including respondent No.2 herein, were served with the process. Respective Advocates had appeared on 5.7.2013 and by filing an application for exemption, undertook to appear before the Court on such dates on which the

matter would be posted.

5. It is further submitted that the Vakalatnama was filed by all the said respondents herein.

6. It is further pointed out that respondent No.2 had approached this Court by way of Criminal Writ Petition No.1802 of 2015. By order dated 28.4.2015, the Petition was disposed of. All the five Criminal Writ Petitions, preferred by the identically placed accused-respondent No.2 herein in connection with those cheques that were issued, have been dismissed by order dated 18.6.2015 with liberty to file Revision Applications. It is on these premises that the Criminal Revision Applications have been filed leading to the impugned orders.

7. Grievance of the Petitioner in all these matters is that without setting forth justifiable reasons, the learned Addl. Sessions Judge has allowed Misc. Application No.1792 upto 1797 of 2015 and has condoned the delay.

8. It is strenuously submitted that the said order is in opposition to the law laid down by the Apex Court in the case of **Esha Bhattacharjee vs. Mg. Committee of Raghunathpur Nafar Academy and Ors. 2013 (12) SCC 649**. The guidelines set out by the Hon'ble Supreme Court in the Judgment in **Esha Bhattacharjee** would clearly indicate that applications for condonation of delay are not to be entertained purely on sympathetic grounds. Unless a strong reason is set out and unless it is established that the delay deserves to be condoned, the Courts should refrain from condoning the delay merely because such matters have to be looked at liberally.

9. It is further submitted that the costs imposed are nominal and does not in any way reduce the rigors of litigation being suffered by these petitioners. It is further submitted that, on the one hand, respondent No.2 in all these matters has caused a delay in approaching the Revisional Court and on the other hand, if the delay is condoned, the revisional proceedings would take time and would increase the rigors and hardship being suffered by the petitioners. It is, therefore,

prayed that the impugned order be quashed and set aside and the Misc. Application No.1792 upto 1797 of 2015 be rejected.

10. Learned Advocate appearing on behalf of respondent No.2-original accused in all these matters, has supported the impugned order. Contention is that the respondent had subsequently left the organization. It is not a deliberate act that the said respondent lost sight of the pending proceedings. It was specifically averred before the Revisional Court that the respondent was unaware about the pending proceedings and only after the non-bailable warrant was issued, that he realized about the said pending proceedings.

11. It is further submitted that respondent No.2-accused does not gain any advantage by delaying the matter since his legal right to question the issuance of process would be in jeopardy on his own conduct. He neither can defeat the rights of the petitioner by delaying the matter, nor would he benefit by causing any delay. He submits that the delay is unintentional and unintended.

12. I have considered the submissions of the learned Advocates.

13. It has emerged from the record that at the behest of one of the accused in the pending matters before the trial Court, Criminal Revision proceeding was taken up before the learned Sessions Judge in May, 2013. The trial in all these matters before the trial Court was dormant for about 1½ years which could be somewhere upto the end of 2015. Subsequently, Criminal Revision Application filed by the applicant i.e. Mr. Yash Birla resulted in the dismissal of the Revision proceedings.

14. Considering the fact situation as above, it is required to be seen as to whether respondent No.2 in these matters can be said to have intentionally and deliberately caused the delay and as to whether he derives any advantage from delaying his own Criminal Revision Applications.

15. The reasons for condonation of delay put forth by the said

respondent appear to be probable. Having left the employment of the said organization, it is quite possible that he may have lost sight of the matter. So also, it appears that he may not have got to know the progress of the matter, considering the fact that one of the accused had approached the Revisional Court and as noted above, the proceedings before the trial Court were dormant for a period of about 1½ years. It is submitted that though the proceedings before the trial Court were not actually stayed, owing to the pendency of the Criminal Revision Application at the behest of Mr. Birla, the trial Court did not proceed with the matter in hand.

16. It also cannot be ignored that respondent No.2 herein had approached this Court by filing Criminal Writ Petition Nos. 1874, 1802, 1803, 1875 and 1876 of 2015. By order dated 18.6.2015, this Court dismissed the Writ Petitions by granting liberty to the said respondent to file Revision Applications. It was noted in paragraph 4 of the order that delay, if any, caused due to the pendency of the criminal writ petitions shall be condoned by the trial Court.

17. The Hon'ble Supreme Court in the matter of **Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. AIR 1987 SC 1353**, while dealing with the issue of delay, observed in paragraph No.3 onwards as under :-

“3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause*

of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected

to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

18. Having considered the fact situation in the light of the submissions of the learned Advocates, I do not find that the delay caused by respondent No.2, in the light of the order of this Court dated 18.6.2015 and one of the accused approaching the Revisional Court, could be either inordinate or deliberate. I also do not find that respondent No.2 herein can draw any advantage or benefit in delaying the filing of his Criminal Revision Applications. In this backdrop, in my view, ends of justice would be met by enhancing the costs awarded

by the Revisional Court and by directing the Revisional Court to decide the pending Criminal Revisional Applications within a time frame.

19. As such, these Criminal Writ Petitions are partly allowed. Though the order of condonation of delay is being sustained, respondent No.2 herein shall pay costs of Rs.4,000/- (Rupees four thousand only) per case which would be inclusive of the costs imposed by the Revisional Court in each of these Petitions. The costs shall be deposited before the Revisional Court within three weeks from today and the petitioner would be at liberty to withdraw the said costs without conditions.

20. So also, considering that in a single hearing, all these Criminal Revision Applications could be decided by the learned Sessions Judge, that I hereby direct the Revisional Court to decide the Criminal Revision Applications filed by respondent No.2 herein, as expeditiously as possible, and preferably on or before 15.10.2016. The parties are at liberty to request the Revisional Court for preponing the

hearing of the matter so as to enable the Court to decide the said Applications after hearing all the sides.

21. Rule is made partly absolute in the above terms.

(RAVINDRA V.GHUGE, J.)