

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1158 OF 2014

Rajeev Harikishan Khanna Vs. Ravi Brijmoihan Khanna & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. S.V. Marwadi i/b G.M. Dubash for applicant.
Ms. M.R. Tidke, APP for State.
Ms. Pooja Thakkar for respondent Nos.1 and 2.

CORAM : A.S. GADKARI, J.
DATE : 11th July 2016.

P.C.:

1. By the present application under Section 482 of Cr. P.C., the applicant has questioned the correctness of the Judgment and Order dated 26.9.2014 passed by the Additional Sessions Judge, Greater Mumbai in Misc.Application No.903 of 2013, rejecting the said application for condonation of delay.
2. The applicant is the original complainant in CC No.127/M/2005 filed before the Additional Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai under Section 166, 177, 182, 200, 352, 406, 418, 420, 465, 467, 468, 471, 506 (ii) read with 34 of the Indian Penal Code. After filing the said complaint, the learned Trial

Court passed an Order under Section 202 thereby calling for report from the Investigating Agency. The police subsequently filed a report of investigation on 2.9.2008. It appears from the record the applicant and his counsel remained absent since 15.3.2008 and therefore the Trial Court dismissed the said complaint for want of prosecution and also granted non-cognizable summary on the police report, by its order dated 19.10.2010.

3. Against the said Order dated 19.10.2010, the applicant preferred a Revision and filed Misc. Application No.903 of 2013 therein for condonation of delay on 29th April 2013. The delay in preferring the Revision is about 900 days. The learned Additional Sessions Judge, Greater Mumbai by the impugned Order dated 26.9.2014 rejected the said application for condonation of delay on the ground that the delay is inordinate and no explanation at all is given by the applicant for condonation of the said substantial delay.

4. Heard the learned counsel for the applicant, the learned counsel for the respondent Nos.1 and 2 and the learned APP for respondent Nos.3 to 7. I have also perused the entire record annexed to the application.

5. The learned counsel for the applicant submitted that the mother of the applicant was sick and suffering from serious ailment and therefore the applicant could not pursue the application filed by him. He further submitted that it is for the same reason, he could not contact his Advocate during the said period of two

years. In support of his contention, he has relied on certain medical reports issued by various hospitals. He submitted that the offence as alleged against the respondent Nos.1 and 2 is very serious in nature and therefore in the interest of justice delay of 900 days in preferring a Revision may be condoned. He submitted that in view of the facts and circumstances of the present case, the application may be allowed and the impugned Order may be set aside.

6. The learned counsel for the respondent Nos.1 and 2 vehemently opposed the application and submitted that the applicant has failed to make out any case for condonation of 900 days delay before the Revisional Court. That the applicant has also not given any reasonable and plausible explanation to condone the delay. She further submitted that the learned Additional Sessions Judge i.e. the Revisional Court has rightly rejected the application for condonation of delay on the ground of huge and inordinate delay. The learned counsel for the respondent Nos.1 and 2 placed her reliance on the decision of the Supreme Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. reported in JT 2013 (12) SC 450 and submitted that the impugned Order is within the conformity of the guidelines enumerated by the Supreme Court. She therefore prayed that the present application may be dismissed with costs.

7. The applicant has filed Revision against the Order dated 19.10.2010 passed by the Trial Court and also filed an application for condonation of delay of 900

days as stated earlier. In the said application bearing Misc. Application No.903 of 2013 except making vague averments about illness of his mother, the applicant has not given any cogent and sufficient reasons for condonation of delay. Perusal of the medical papers annexed to present the application, discloses that the mother of the applicant was not continuously admitted in the hospital during the period of two years. The applicant has nowhere stated that he was either prohibited or precluded from approaching his Advocate and give instructions pertaining to his own case from time to time. It is also not the case of the applicant that, during the period of said two years, he never stepped out of his house and therefore he could not contact his Advocate.

8. The Supreme Court in the case of Esha Bhattacharjee (supra), after taking into consideration the law relating to condonation of delay as contemplated under Section 5 of the Limitation Act, in para-15 of the said Judgment has enumerated the principles pertaining to the condonation of delay. In sub-paras namely (v), (vii), (viii) and (ix) of paragraph-15 it has been held that, lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. That the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. It has been further held that, there is no distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted

whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation. That the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration while dealing with condonation of delay. It is further held that it is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principles cannot be given a total to by in the name of liberal approach.

9. After taking into consideration the guidelines enumerated by the Supreme Court in the aforesaid case, in the present case the record reveals that, the applicant, except making vague submissions, has utterly failed to make out any case for condonation of delay. The conduct, behaviour and attitude of the applicant in his inaction in attending the Trial Court and/or instructing his Advocate with due diligence has initially led the Trial Court to dismiss the complaint for non-prosecution and the further colossal and/or inordinate delay in preferring the said Revision, further endorses that the applicant was not at all diligent in pursuing the complaint filed by him.

10. As stated earlier, there is nothing on record to show that the mother of the applicant was so serious and/or suffering from any such ailment since 2008 till April 2013 due to which the applicant could not take effective steps either pursuing the original complaint and/or challenging the Order dated 19.10.2010 passed by

the Trial Court. In view of the facts of the present case, I am of the considered opinion that the applicant has failed to make out any case for codonation of the said inordinate delay of 900 days in filing the Revision application before the Sessions Case.

11. In the premise, I find no merit in the present application and the same is accordingly dismissed.

(A.S. GADKARI, J.)