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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4674 OF 2014

Nirav Mukesh Parikh Petitioner

Versus

State of Maharashtra and ors Respondents

Mr. S. D. Patil, for the petitioner
Mr. Pranav Babheka i/by Mr. D. B. Pawar, for respondent No.2.
Mrs. A.S. Pai, APP for the respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24TH FEBRUARY 2016.

P.C. :

1. By this writ petition, the petitioner is challenging the judgment and order dated 8th October, 2014, passed by the Sessions Court, Greater Bombay, in Criminal Misc. Application No.1672 of 2013, thereby rejecting application for condonation of delay filed by the petitioner in preferring Revision Application against the order dated 30.6.2013, passed in Criminal Case No.124/SW/2010 by Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai, whereby complaint filed by the

petitioner came to be dismissed under Section 245(1) of Code of Criminal Procedure and the proceedings were closed.

2. Submission of learned counsel for petitioner is that though there was delay of 74 days in preferring revision against the order passed by the Additional Chief Metropolitan Magistrate on 26.2.2013, the delay was on account of ill health of the petitioner and also on account of his travelling in connection with his job at Bangalore. It is further submitted that the delay was neither willful nor intentional. The applicant is having strong case on merits and therefore, he has challenged the order of trial Court before Additional Sessions Judge, Mumbai, by preferring the Revision and applied for condonation of delay.

3. According to learned counsel for petitioner, the drafting of the application for condonation of delay will reveal that the fault rests with the advocate, who has not properly put up the case of the petitioner before the Revisional Court. It is submitted that it was for the advocate of petitioner to produce necessary documents in support of the grounds set out by the petitioner for condonation of delay. However, the tenor of the application itself filed before the Revisional Court, reveals that it was not drafted properly, even proper instructions were not given to the petitioner for production of supporting documents. Hence according to learned counsel for the petitioner, for the fault on the part of advocate, petitioner

should not suffer.

4. Moreover, according to learned counsel for petitioner, it is essential on the part of the Court that the question of limitation should be construed liberally and the term “sufficient cause” should be interpreted liberally while deciding application for condonation of delay. To substantiate his submission, learned counsel for petitioner has placed reliance on the proposition of law laid down by Apex Court in case of **Collector, Land Acquisition, Anantnag -vs- Master Katiji (1988) 2 SCC 1353**. It is urged that as per legal propositions, approach of the Court should be justice oriented. The Court has to bear in mind that there is no presumption that delay is occasioned deliberately on account of negligence or on account of malafides because litigant does not stand to the benefit by resorting to delay. .

5. It is further submitted by learned counsel for petitioner that here the petitioner was even ready to pay the costs so as to compensate the loss which respondent might have suffered or may suffer. Hence according to him, the Court should not have thrown out his case at the very threshold itself thereby defeating the cause of a justice . According to him, if the delay is condoned that too subject to costs, the matter will be decided on merits, giving sufficient opportunity to respondent also to contest. In the opinion of learned counsel for petitioner, therefore,

Revisional Court should have condoned the delay, taking wholesome view of the matter so as to achieve substantial cause of justice. The impugned order, therefore, passed by the Revisional Court, according to him rejecting application of the petitioner for condonation of delay is required to be quashed and set aside.

6. Per contra, learned counsel for respondent has strongly supported the said order and in my considered opinion rightly so. Whether to grant condonation of delay or to reject the same is entirely within the discretion of the Court provided sufficient cause for condonation of such delay is made out. It will be for the Court to decide whether cause shown is sufficient or not. In the instant case, Revisional Court has considered whether any cause as such was shown by the petitioner and whether that cause was sufficient or not. Perusal of the order passed by the Revisional Court reflect that it has considered averments made in the application and found that petitioner has come up with contradictory stands. At one stage, he said that due to his illness he was unable to approach the Revisional Court in time whereas at another stage, he was stating that he had to travel frequently for the purpose of his job at Bangalore and therefore, he could not file revision in time. The Revisional Court found that if he was ill, he could not have travelled to Bangalore for doing job, that too frequently and if he was travelling to

Bangalore frequently for job, it follows that he was not ill. The Revisional Court further considered the fact that not a single document worth the name was produced to substantiate either the case that he was ill or to show that he had to travel to Bangalore.

7. Thus, Revisional Court, after considering the cause, as shown by the petitioner for condonation of delay, exercised its discretion and noted that there was absolutely no cause for the delay, much less sufficient cause and rejected the said application. Revisional Court also considered the proposition that the technicalities should not come in the way for doing substantial justice and that liberal approach should be taken in the matter of condonation of delay. But as held by Revisional Court, "there should be at least some base for taking liberal approach in such matters. It was incumbent on the part of the petitioner at least to make out a case to invite discretion of the Court in his favour. On filing of application for condonation of delay, such discretion cannot be exercised to condone the delay". It can, therefore, hardly be said that Revisional Court has committed any illegality in rejecting the petitioner's application for condonation of delay.

8. As regards the contention of learned counsel for the petitioner that it was the fault of advocate who was representing the petitioner in the Revisional Court, no such affidavit is filed on record. However, it is too late

a day to raise contention, in as much as the advocate is also an officer of the Court to hold that on account of fault on his part petitioner was not represented properly therein and hence petitioner was prevented from putting up his case. Therefore, that ground also cannot be made available.

9. Moreover, as rightly submitted by learned counsel for respondent, petitioner has in this writ petition also not sought any leave to produce the document supporting his alleged cause for condonation of delay i.e. medical certificate or document showing that he had to travel frequently to Bangalore. Therefore, at this stage also, petitioner is unable to substantiate or put up any sufficient cause for condonation of delay. In such situation on his mere asking, the delay caused in preferring revision against dismissal of the complaint that is in Criminal matter where the sword of prosecution always remains hanging on the accused cannot be considered. The Court has to consider the aspect of sufficient cause in different manner in criminal matters that in the case of civil litigation, as observed by the Apex Court in **Ajit Singh Thakur Singh and anr -vs- State of Gujarat (1981) 1 SCC 495** and our own High Court in **V. Gopalkrishnan Nair, Assistant Commissioner of Income Tax -vs- Babarao Narhari Keshatwar and anr, (1992) 1 Mah LJ 742**. Hence on failure of petitioner to make out any semblance of the cause, much less sufficient cause, it has to be held that revisional Court has rightly

dismissed his application for condonation of delay. There is no ground made out before this Court also to set aside or to quash the said order as no illegality is pointed out in the said order. Hence writ petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]