

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 3254 OF 2017
IN
CRIMINAL APPLICATION NO. 1048 OF 2017**

Lalita Pawan Dahimiwal ..APPLICANT

VERSUS

State of Maharashtra and Others ..RESPONDENTS

Mr. V.Y. Bhide, Advocate for applicant
Mr. B.A. Shinde, A.P.P. for Respondent No.1
Mr. P.S. Dighe, Advocate for Respondent Nos. 2 and 3

**CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 10, 2017**

PER COURT :-

This is an application by Lalita Pawan Dahimiwal seeking condonation of delay of 527 days caused in filing an application for leave to file appeal against the judgment of acquittal dated 14th September, 2012 passed by the learned Additional Sessions Judge, Shrirampur in Criminal Appeal No. 20 of 2017.

2. The applicant got married to the son of respondent nos. 2 and 3 viz. Pawan in the year 1997.

There were some disputes after the marriage which led to filing of the report by the applicant against her husband i.e. deceased – Pawan and respondent nos. 2 and 3. On the basis of that report, Regular Criminal Case No. 119 of 2005 was instituted against them in the Court of Judicial Magistrate First Class (3rd Court), Shrirampur for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code. The learned Magistrate, after considering the evidence on record, convicted the deceased – Pawan and respondent nos. 2 and 3 of the offences punishable under Section 498-A read with Section 34 of the I.P.C. The deceased – Pawan and respondent nos. 2 and 3 challenged their conviction and sentence by filing Criminal Appeal No. 20 of 2007 before the Additional Sessions Judge, Shrirampur. After scrutinising the evidence on record and hearing the parties, the learned Additional Sessions Judge, Shrirampur acquitted the deceased – Pawan and respondent nos. 2 and 3 of the offence punishable

under Section 498-A of the I.P.C. as per the judgment and order dated 14th September, 2012. The applicant desires to challenge the said judgment of acquittal by filing an appeal in this Court. She filed an application seeking leave to file appeal alongwith the present application for condonation of delay.

3. The learned Counsel for the applicant submits that the applicant had filed a petition for judicial separation, while the deceased – Pawan had filed a petition for divorce before the learned Civil Judge, Senior Division, Sangamner bearing Hindu Marriage Petition Nos. 79 of 2005 and 84 of 2007 respectively. The petition filed by the applicant came to be dismissed, while that of Pawan came to be allowed. The applicant preferred Regular Civil Appeal Nos. 120 of 2008 and 121 of 2008 against the orders passed by the learned Civil Judge, Senior Division, Sangamner in the above mentioned Hindu Marriage Petitions. The said appeals came to be

dismissed on 26th April, 2016. While dismissing these appeals, the learned Appellate Court referred to the impugned judgment of acquittal passed in Criminal Appeal No. 20 of 2007 in paragraph 19 of the judgment. The learned Counsel submits that the applicant was not a party to the said appeal. She was not knowing about the decision taken in that appeal. According to him, it was for the first time that the applicant came to know about acquittal of the deceased – Pawan and respondent nos. 2 and 3 in that appeal, when the judgment came to be delivered by the Appellate Court in Regular Civil Appeal Nos. 120 and 121 of 2008. He, therefore, submits that from the date of her knowledge of the judgment of acquittal, the period of limitation would start to run. The applicant has filed the proposed appeal with the application seeking leave to file it on 18th February, 2017. Therefore, according to him, there is delay of 527 days only. He submits that the findings recorded by the Appellate Court while

acquitting Pawan and respondent nos. 2 and 3 in Criminal Appeal No. 20 of 2007 would come in the way of the applicant in the second appeal filed by her against the common judgment and decree passed by the Appellate Court in Regular Civil Appeal Nos. 120 and 121 of 2008. He submits that after the judgment of acquittal passed by the First Appellate Court, the husband of the applicant has expired. He states that it is only for the purpose of removing a stigma that the report filed by the applicant was false, that she wants to prosecute her cause in the proposed appeal and that she does not wish to see respondent nos. 2 and 3 convicted and harassed. He submits that the delay is not intentional or deliberate. It may be condoned in the interest of justice.

4. As against this, the learned Counsel for respondent nos.2 and 3 submits that there is inordinate delay of more than four and half years in filing the appeal. He submits that the certified

copy of the judgment dated 14th September, 2012 passed in Criminal Appeal No. 20 of 2007 was produced in Regular Civil Appeal Nos. 120 and 121 of 2008 much prior to its decision. The applicant was well aware of the said judgment of acquittal. However, she falsely stated that she came to know about the said judgment only when the judgment dated 26th April, 2016 was delivered in the said civil appeals. He submits that the contention of the applicant about her getting knowledge of the judgment of acquittal is not bonafide. The husband of the applicant i.e. Pawan is no more. Respondent nos. 2 and 3 are aged persons. The applicant has filed this application just to harass them. Relying on the judgment in the case of **Basawaraj and Another Vs. The Special Land Acquisition Officer 2013(5) All M.R. 934** he submits that in the absence of any sufficient cause, the inordinate delay in filing the appeal cannot be condoned. He therefore prays that the application may be rejected.

5. The impugned judgment of acquittal passed in Criminal Appeal No. 20 of 2007 is dated 14th September, 2012. The period of limitation for filing the appeal against that judgment would start running from the date of delivery of that judgment and after 30 days therefrom, there would be delay in filing the appeal. The office note shows that there is delay of 1561 days in filing the proposed appeal. However, the applicant has calculated the delay of 527 days only. Thus the calculation of the delay in terms of days is ex facie incorrect.

6. As seen from paragraph 22 of the the common judgment dated 26th April, 2016 delivered in Regular Civil Appeal Nos. 120 and 121 of 2008, the certified copy of the judgment in Criminal Appeal No. 20 of 2007 was produced at Exhibit 12 in the said appeals. It is, thus, clear that it was produced before the Appellate Court much prior to the date of delivery of

the judgment. Therefore, the contention of the applicant that she came to know about the judgment of acquittal after she read the judgment on 26th April, 2016, cannot be accepted. It is, thus, clear that the applicant has tried to suppress the material fact about her knowledge in respect of the decision dated 14th September, 2012 rendered in Criminal Appeal No. 20 of 2007. The applicant cannot be said to have come before the Court with clean hands. The contention of the applicant that she came to know about the impugned judgment for the first time after 26th April, 2016 cannot be said to be bonafide.

7. Even if it is accepted for a while that the applicant came to know about the impugned judgment after 26th April, 2016, the delay of 527 days, as has been calculated by the applicant, does not seem to have been satisfactorily explained. The decree of divorce was passed against the applicant on 07th November, 2008. The decree of divorce came to be

confirmed by the first Appellate Court on 26th April, 2016. The husband of the applicant i.e. deceased Pawan, who had got the decree of divorce against the applicant, died on 22nd May, 2016. Considering the fact that there had been dissolution of marriage between the applicant and the deceased Pawan in the year 2008 itself, it does not stand to reason that after his demise, the applicant would be under such a grave sorrow that she would not think of challenging the impugned judgment of the acquittal. The ground for the delay shown by the applicant is not sufficient and satisfactory.

8. The contention of the learned Counsel for the applicant that the applicant does not wish to harass respondent nos. 2 and 3 and to see them convicted, but she only wants to remove the stigma on her that the F.I.R. lodged by her was false. With the assistance of the learned Counsel for the applicant, I perused the impugned judgment which does

not contain a single observation that the F.I.R. lodged was false. The acquittal of the deceased – Pawan and respondent nos. 2 and 3 has been recorded on the grounds that there had been delay in lodging the report, there was no independent corroboration to the version of the applicant and her evidence suffered from omissions and contradictions. In the circumstances, it cannot be said that the F.I.R. lodged by the applicant has been held to be false and the applicant has been stigmatized by the learned Additional Sessions Judge, who has decided Criminal Appeal No. 20 of 2007. The learned Counsel for respondent nos. 2 and 3 cited the judgment in the case of **Basawaraj and Another (supra)** wherein it is observed in paragraph 15 as under:-

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which

prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

9. If the facts of the present case are considered on the touchstone of the observations made above, I do not find that this is a fit case to

invite discretion of the Court in the matter of condonation of delay. There is inordinate delay of 1561 days which has not been explained by the applicant satisfactorily. There was no sufficient cause for such inordinate delay. The application is liable to be rejected and accordingly rejected. No costs.

[SANGITRAO S. PATIL]
JUDGE

SSD