

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

CRIMINAL APPLICATION NO.3986 OF 2017

Manoj s/o Dadarao Adhane,
Age 24 years, occu. Agri.,
R/o Viramgaon, Taluka Khultabad,
District Aurangabad

.. Applicant

Versus

1. The State of Maharashtra
2. Raibhans/o Bavrao Adhane,
Age 48 years, Occu. Agri.,
R/o Viramgaon, Taluka Khultabad,
District Aurangabad
3. Sahebrao s/o Bavrao Adhane,
Age 41 years, Occu. Agri.,
R/o As above
4. Kashibai w/o Sahebrao Adhane,
Age 35 years, Occu. Agri.,
R/o As above
5. Anjalibai w/o Raibhan Adhane,
Age 35 years, Occu. Agri.,
R/o As above

.. Respondents

Mr Abhishek Kulkarni, Advocate for applicant
Mr A.R. Borulkar, A.P.P. for respondent no.1

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 08.09.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 11.11.2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. This is an application for condonation of delay of 416 days in preferring application seeking leave to file appeal against judgment of acquittal under Section 302 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr Abhishek Kulkarni for the applicant and learned A.P.P. Mr A.R. Borulkar for respondent no.1-State.

3. Learned Advocate Mr Abhishek Kulkarni argued :

(I) Father of the applicant was killed by respondents no.2 to 5 over a dispute of land and well water. His dead body was found in a field near the house of the accused. It is a clear case of homicidal death. There was serious assault by accused nos.1 and 2 and son of accused no.1 about one month before the incident. Even after acquittal, the respondents have beaten the applicant. Hence, the facts of the case need fresh re-appreciation by way of appeal.

(II) With regard to delay condonation, Advocate Mr Kulkarni submitted that the applicant was not aware about his right of appeal against acquittal and due to poor financial condition he could not prefer the appeal in time. Learned A.P.P. has submitted that the State has not preferred any appeal. He submitted that the delay is large and cannot be condoned mechanically. There was no strong evidence against the accused.

4. Learned Advocate Mr Abhishek Kulkarni relied on the judgments in **Collector, Land Acquisition, Anantnag and anr., Vs. Mst. Katiji and ors., AIR 1987 SC 1353** and **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and ors., (2013) 12 SCC 649.**

5. After carefully going through the record and the submissions made at the Bar and the ruling cited, we find that there is huge delay. The judgment was delivered on 11.4.2016 and the appeal is preferred on 18.7.2017. In Collector, Anantnag's case (cited supra), the Apex Court laid down that the expression "sufficient cause" should be liberally construed so as to advance substantial justice. When the State is a party, the Court should take into consideration the technical requirement of obtaining sanction and slow moving of files from table to table and State should not be given step motherly treatment.

6. In **Esha Bhattacharjee's** case (cited supra), the Apex Court took resume of the entire case law on the subject of condonation of delay and laid down guiding principles in paragraph 21 (1) to 21 (13) and 22 (1) to 22 (4).

7. As per ground no.21.8 (viii), distinction should be made between inordinate delay and short delay. In case of inordinate delay, doctrine of prejudice is attracted and one warrants strict approach.

8. Some of the grounds relevant to the facts of the present case may be stated as follows :

"21.1 (I) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical consideration should not be given undue and uncalled for emphasis.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration of 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.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. 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 principle cannot be given a total go by in the name of liberal approach.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

9. We rely on following principles laid down in **Basawaraj v. Land Acquisition Officer**, 2013 (14) SCC 81.

“ sufficient cause is a cause when a defendant could not be blamed for his absence. It means party should not have acted in negligent manner. Unless satisfactory explanation is furnished, Court should not allow the application for condonation of delay. The Court has to examine whether mistake is bona fide or was merely a device to cover an ulterior purpose.”

11. The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation”. In **P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578**, it is held that “judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in **Abdul Rehman Antulay Vs. R.S. Nayak**.”

12. In **Kumar Vs. Kamata ICU Bank, 2013 (11) SCC 668**, it is laid down that bald statements with no reasons as to non-intimation cannot be sufficient cause. In this case, the High Court had condoned delay of 290 days and 785 days and though the said order was not directly challenged in appeal from the main order, the Apex Court held that the inordinate delay should not have been condoned.

13. In **Union Of India & Ors vs Nripen Sarma, 2013 (4) SCC 57**, when the explanation given by the State for condonation of delay of 239 days in preferring the appeal was not found satisfactory, the delay was rightly not condoned by the High Court and the same was upheld by the supreme Court. The applicant's contention that he was not aware of his right of appeal and his financial condition was poor cannot be accepted as sufficient grounds for condonation of huge delay of 416 days. Even as per affidavit, the applicant learnt about his right in July 2016 and for one year, he did not file appeal. If he was poor, he should have approached the office of Legal Services Authority. We, therefore, find that there was no sufficient cause.

14. As far as the merits are concerned, father of the applicant was physically challenged. On the fateful night, he had gone to his field for starting electric motor for watering the plants. The applicant and his friend have allegedly gone to the field at 2.30 a.m. and they did not find him there. After some time his body was found tied with ropes and thrown into the well. The F.I.R. was filed on the next day morning.

15. After going through the evidence, we find that accused nos.1 and 2 are brothers of the deceased. They had joint land, which was separated by family arrangement, each getting equal share. Each of the brothers was given share in well water for collecting water on two days in a week. The claim that deceased wanted a partition and there was only family arrangement cannot be a serious ground of dispute so as to kill somebody.

16. As far as the quarrel dated 10.11.2008, one month before the incident is concerned, there was no evidence to show that said quarrel took place between deceased and accused nos.1 and 2. Besides, the fact the accused were residing in the field, where the dead body was found, there is no other material. It may create suspicion, but it is not a circumstantial evidence, which will prove the offence beyond reasonable doubt.

17. The view of learned trial Judge appears reasonable and probable view. The facts do not warrant to neglect the delay and admit the appeal on the ground of serious miscarriage of justice.

16. In view of above, this is not a fit case for condonation of delay. Hence, the application is rejected. Leave refused.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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