

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 212 OF 2016
IN
STAMP NUMBER MAIN NO. 2331 OF 2016

MR. JOAQUIM FERNANDES., ... Applicant
Versus
STATE THR. THE PUBLIC PROSECUTOR ... Respondents
AND ANR.,

Mr. Rohit Bras De Sa, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for respondent no.1.

Mr. J. R. Serrao, Advocate for respondent no.2.

Coram:- M. S. SONAK, J.

Date:- 17th April, 2017

P.C.

Heard Mr. Bras De Sa for the applicant, Mr. Rivankar, the learned Public Prosecutor for respondent no.1 and Mr. Serrao for respondent no.2.

2. This application seeks condonation of delay of 359 days in instituting Criminal Revision Application under Section 397 of Cr.P.C. In fact, this application should be treated as an application, seeking condonation of delay in instituting an application for leave to appeal. By a separate order, leave has been granted to the applicant to convert the CRA into an application, seeking leave to appeal.

3. The judgment and order, acquitting respondent no.2, was made by the learned Sessions Judge on 22/07/2015. The application seeking condonation of delay to institute an application for leave to appeal, has been lodged on 15/07/2016. This means, there is delay of approximately 11 months or thereabout. The reasons set out for such delay is that the applicant came to know of the judgment and order, acquitting respondent no.2 only in the last week of February, 2016. He acquired this knowledge through internet. Thereafter, it is set out in the application that the applicant made enquiries with the Public Prosecutor and some time in March, 2016 and succeeded in obtaining the xerox copy of the judgment and order in March, 2016. Thereafter, the application was made for certified copy and the same was obtained some time in July, 2016. Soon thereafter, on 15/07/2016, Civil Revision Application, which is now permitted to be converted into an application seeking leave to appeal, came to be instituted. Mr. De Sa, on the basis of the aforesaid, submits that the applicant was under the bonafide impression that the State would carry the matter in appeal, since the applicant could not have been and was not a party before the learned Sessions Judge. In any case, Mr. De Sa submits that no sooner the applicant obtained information about acquittal of respondent no.2, the applicant has taken some steps to obtain copies and certified copies of the impugned judgment and order

and soon thereafter, lodged these proceedings. He submits that sufficient cause has been shown in the application. He submits that the applicant has gained nothing by the delay and, therefore, this is a matter where the expression "sufficient cause" should receive a liberal construction. He has offered to cite decisions in support of his submission that the expression "sufficient cause" should receive a liberal interpretation.

4. Mr. Serrao, the learned Counsel for respondent no.2 has submitted that this is a case where no cause much less, any sufficient cause has been shown. He submits that there is no reason set out in the application as to why the applicant did not check the status of the matter on Internet earlier. In any case, Mr. Serrao submits that by last week of February, 2016, the applicant had obtained information about the acquittal. By March, 2016, the applicant had also obtained xerox copy of the judgment and order, by which, respondent no.2 was acquitted. In such circumstances, Mr. Serrao submits that nothing prevented the applicant from instituting an application for leave to appeal in the month of March, 2016 itself and delay between March, 2016 and July, 2016, has not at all been explained.

5. Mr. Serrao submits that delay cannot be condoned unless sufficient cause is shown. He submits that sufficient cause must be ascertainable and must not comprise of some vague

statements. He submits that the payment of costs is never substitute for absence of reasons to condone the delay. He submits that certain rights are vested in the opposite party and such rights cannot be taken away in the absence of substantial and cogent explanation for the delay. In support of all these propositions, Mr. Serrao places reliance upon the following decisions :

(i) P. K. RAMACHANDRAN VS. STATE OF KERALA;(1997)0 SCC 1252.

(ii) RAJENDRA AKRE VS. RAJKUMAR B BALBUDHE; 2016(7)ALL MR 86.

(iii)MANIBEN DEVRAJ SHAH VS. MUNICIPAL CORPORATION OF BRIHAN MUMBAI; (2012)0 SCC 285.

(iv) KAMALBAI N. SHRIMAL VS. GANPAT V. GAVARE; 2007(1)BOM.C.R.51.

6. Mr. Rivankar, the learned Public Prosecutor leaves the matter to the Court since the State has not instituted an appeal against the acquittal in this matter.

7. Upon consideration of the rival submissions and upon perusal of the material on record, it is true as contended by Mr. Serrao that the applicant could have been more diligent in the matter. However, upon consideration of the cause shown, it

cannot be said that there is no sufficient cause made out or that the applicant is required to be castigated as grossly negligent or irresponsible person. The applicant has stated that he was pursuing the matter and it is only through medium of Internet, that he came to know in February, 2016 that by judgment and order dated 22/07/2015, respondent no.2 has been acquitted. Thereafter, the applicant did approach the Public Prosecutor and secured the xerox copy of the judgment and order. Some time was thereafter spent to obtain certified copy.

8. Mr. De Sa has submitted that all throughout, the applicant bonafide believed that it is for the State to institute the appeal and State will institute such an appeal. Upon cumulative consideration of all these circumstances, it cannot be said that there is no sufficient cause shown for the condonation of delay.

9. It must be noted that in most cases where condonation of delay is applied for, there is lapse on the part of the applicant. That by itself is not sufficient to turn down the plea of the applicant. As long as the cause shown is not actuated by malafide or is not put forth as some dilatory strategy, the Courts are required to show utmost consideration to the applicant. In doing so, however, the Courts cannot altogether forget the opposite party. The opposite party in a situation of this kind, is not at all to blame and yet the opposite party does suffer prejudice. In this

case also, Mr. Serrao is right in his submission that it is the opposite party, which will have to suffer prejudice in case the delay is condoned. Such prejudice, however, can be compensated in terms of the costs.

10. The decision in the case of RAJENDRA ACRE (supra) is an authority for the proposition that unless sufficient cause is shown, the delay cannot be condoned by mere imposition of costs. In this case, sufficient cause is shown and, therefore, delay can be condoned by way of imposition of costs.

11. In P. K. RAMCHANDRAN (supra), the Hon'ble Apex Court has held that recording of satisfaction that the explanation for delay was either reasonable or satisfactory is the pre-requisite before discretion is exercised to condone the delay. As noted earlier, in this case, sufficient cause has been shown by the applicant.

12. In KAMALBAI SHRIMAL (supra), the applicant appeared before the Executing Court and applied for time to vacate the premises and only thereafter, instituted the appeal, after inordinate and unexplained delay. The facts in the said case offer no parallel to the facts in the present case.

13. Similarly, in the case of MANIBEN SHAH (supra), the

Hon'ble Apex Court was concerned with the delay of more than 7 years and 3 months in the institution of appeal by the State, by citing routine reason that the State is impersonal agency. Again, this decision is not applicable to the facts of the present case.

14. In this case, it is to be noted that the applicant claims to be the victim of the assault. In terms of Section 2(x) read with proviso to Section 372 of Cr.P.C., even the victim is entitled to institute an appeal. This is also a circumstance, which is required to be taken into consideration in respect of applicant's plea for condonation of delay.

15. Upon cumulative consideration of the aforesaid circumstances and after recording satisfaction that sufficient cause has been shown, Civil Application, seeking condonation of delay is allowed, subject to the applicant paying costs of Rs.15,000/- to respondent no.2, within a period of four weeks from today. In case the amount of costs is not paid or deposited in this Court within a period of four weeks from today, this application shall be deemed to have been dismissed, without further reference to this Court. In case the amount of costs are deposited in this Court, respondent no.2 will have a liberty to withdraw the same unconditionally.

16. This Criminal Miscellaneous Application is disposed of in

aforesaid terms.

M. S. SONAK, J.

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