

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.24 OF 2015

NAVI MUMBAI MUNICIPAL CORPORATION)...APPLICANT

V/s.

M/S.ARCHANA MATERNITY HOME & ORS.)...RESPONDENTS

AND

CRIMINAL APPLICATION NO.25 OF 2015

NAVI MUMBAI MUNICIPAL CORPORATION)...APPLICANT

V/s.

M/S.DISHA SONOGRAPHY CENTRE & ORS.)...RESPONDENTS

Mr.Ajay Patil, Advocate for the Applicant.

Mr.M.V.Thorat, Advocate for Respondent Nos.1 & 2.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 3rd MARCH 2017.

P.C. :

1 These are applications for condonation of delay in filing applications for leave to challenge the acquittal of respondent nos.1 and 2 from the offence punishable under Section 23 of the Pre-conception & Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 2003, recorded by the learned trial Magistrate on 11th June 2014.

2 Heard the learned advocate appearing for the applicant. By relying on pleadings in paragraph 9A of the applications, the learned advocate argued that the applicant was prevented by sufficient cause for not filing the applications for leave within the period of limitation. He argued that in view of the provisions of Section 378(5) of the Code of Criminal Procedure (Cr.P.C.), as the complaint was filed by a public servant, the limitation prescribed is of six months.

3 The learned advocate appearing for respondent nos.1 and 2 opposed the applications by contending that the Pre-

conception & Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 2003, is a special law and as per rules, the period of limitation is only fifteen days, and therefore, general law as envisaged by Section 378(5) of the Cr.P.C. is not applicable. By relying on the ruling in the matter of **Post Master General vs. Living Media India Ltd.**¹, the learned advocate argued that there cannot be any different treatment in the matter of condonation of delay to the applicant even though he is a public servant as the principle is that of equality before law. Hence, the State cannot be given any different treatment in the matter of condonation of delay.

4 I have carefully considered the rival submissions and also perused the judgment in the matter of **Post Master General (supra)**.

5 The principles for condonation of delay are given by the Hon'ble Apex Court in the matter of **Collector Land**

¹ (2012) 3 SCC 563

Acquisition Anantnag vs. Mst.Katiji & Ors.². They read as follows :

- “1 Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- 2 Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- 3 “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
- 4 When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- 5 There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of malafides. A

² 1987 AIR 1353

litigant does not stand to benefit by resorting to delay. Infact, he runs a serious risk.

- 6 It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

6 In the light of these observations of the Hon'ble Apex Court, I am of the opinion that in the wake of pleadings in paragraph 9A of the application for condonation of delay, the applicant was prevented by sufficient cause for not filing the applications for leave within limitation. Hence the order :

- i) The application for condonation of delay is allowed.
- ii) The delay in lodging the applications for leave to appeal is condoned.

(A. M. BADAR, J.)