

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1083 OF 2017

Gyanchand B. Bhatia

Petitioner

versus

The State of Maharashtra and another

Respondents

Mr.L.M.Shukla i/by P.M.Rajput.

Mr.Girish J. Priyani for Respondent no.2.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st September 2017

PC :

1. The petitioner is aggrieved by order passed by Additional Sessions Judge, Kalyan dated 7th February 2017 condoning the delay of eight days caused in preferring the appeal challenging the order of conviction. The said appeal was preferred by respondent no.2 before the said Court.

2. Learned advocate for petitioner submits that false contention was made before the Appellate Court by advocate for respondent no.2 while arguing the application for condonation of delay. It was argued that the respondent no.2 was ill and hence he was not present on the date of judgment which was false and therefore, the Court ought not to have condoned the delay. It is submitted that delay was condoned without issuing notice to the applicant. He relied upon a decision of Supreme Court in Civil Appeal No.6974 of 2013/Civil Appeal No.6975 of 2013 (Basawaraj and another Vs. The Special Land Acquisition Officer) decided on 22nd August 2013.

3. Perused the order passed by Sessions Court condoning delay of eight days. Also perused all the documents annexed to this application including application for condonation of delay. The respondent no.2 has been convicted for offence under Section 138 of Negotiable Instruments Act. In the application for condonation of delay, it was contended that the respondent-accused was suffering from severe health issues and he had annexed the copies of medical case papers of hospital. In the application it was not stated that the respondent no.2 was not present on the date of conviction. It appears from the impugned order that the advocate representing the respondent no.2 had advanced submission that on the day of judgment, the accused-respondent no.2 was not present because of ill health. The respondent no.2 was convicted on 30th December 2016. It is pertinent to note that the order also refers to argument of advocate for respondent no.2 that the accused had furnished bail on 30th December 2016, however, no appeal filed. The fact that bail was furnished on 30th December 2016 indicates that respondent no.2 was present on 30th December 2016 which is date of judgment of conviction. It appears that the first submission about absence was made inadvertently. The Appellate Court has condoned the delay on the basis of observations made in paragraph 4 of the order, wherein it is observed that the appellant was sick and undergoing medical treatment and the appeal is statutory right of accused and hence delay of eight days caused is required to be condoned.

4. In the decision relied upon by the applicant, the order under challenge was passed on 28th February 2002 and the appeals were preferred on 16th August 2017. There was a delay of five and a half

years in filing appeals. In this context and in the facts of that case, the Supreme Court had observed that sufficient cause means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts of a case or it cannot be alleged that the party has not acted diligently or remained inactive. However, in facts of each case, discretion has to be exercised judiciously. In the present case, delay of eight days was explained and there was sufficient cause to condone the same. Although the delay was condoned without issuing notice to the applicant, considering the fact that delay was of eight days and sufficient cause was shown to condone the delay and after hearing the applicant in the present application I do not find any infirmity in the reasoning of the Appellate Court. No case is made out to interfere in the impugned order. Hence, the petition is required to be rejected.

5. Hence, I pass following order :

ORDER

(i) Writ Petition No.1083 of 2017 is rejected and the same stands disposed of.

(PRAKASH D. NAIK, J.)