

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.153 OF 2015

IN

CRIMINAL REVISION APPLICATION (STAMP) NO.159 OF 2015

BISWAS NAIR

)...APPLICANT

V/s.

MRS.SHINIE BISWAS NAIR AND ANR.

)...RESPONDENTS

Mr.Rajendra Sorankar, Advocate for the Applicant.

Mr.A.Tripathi, Advocate for Respondent No.1.

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

CORAM : A. M. BADAR, J.

DATE : 3rd MARCH 2017.

P.C. :

1 This is an application for condonation of delay in preferring the revision petition challenging the order passed by the learned JMFC, Court Room No.9, Pune, on 20th January 2014.

2 Heard learned advocate appearing for the applicant. He argued that initially the applicant had taken resort of the

provisions of Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing the proceedings by filing Criminal Application No.377 of 2014. However, subsequently, those proceedings were withdrawn on 27th October 2014. Hence, there is delay in lodging the revision petition.

3 The learned advocate appearing for respondent no.1 opposed the application by contending that there are no sufficient grounds for condoning the delay. By drawing my attention to the averments in the application, the learned advocate argued that when the applicant is contending that he was on business tour up to 4th February 2015, then it was not possible for him to swear the affidavit of the applicant on 3rd February 2015. Therefore, the reasons pressing service of condonation of delay are false and therefore the application is liable to be dismissed.

4 I have carefully considered the rival submissions and also perused the pleadings in the application. In paragraph 4 of the application, as a reason for seeking condonation of delay, it is

averred that the applicant had, had to travel in the month of December and January from 3rd December to 14th December, 16th December to 2nd January and 26th January to 4th February for his business tour. If these averments on affidavit are tested from the date of swearing the affidavit, then prima facie, the averments appears to be incorrect. It is seen that the affidavit in support of this application was sworn before a notary on 3rd February 2015.

5 At the same time, it is seen that earlier applicant had preferred a petition under Section 482 bearing Criminal Application No.377 of 2014 challenging the order passed by the learned courts below. As such, it appears that he was prosecuting his remedy before this court but by invoking provisions of Section 482 of the Cr.P.C. This court had permitted him to withdraw those proceedings for initiating appropriate proceedings vide order dated 27th October 2014. Thereafter also, the revision petition is not filed immediately or within the period of even three months from 27th October 2014.

6 The applicant is impugning the orders passed by the courts below. Prejudice caused to the respondent no.1 because of delay in filing the proceeding can be taken care of by awarding appropriate costs. By condoning the delay, the ultimate result would be decision of the matter on merit. Therefore the order :

- i) The application is allowed subject to costs of Rs.5,000/- payable to respondent no.1 within a period of two weeks from today.

(A. M. BADAR, J.)