

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.518 OF 2016

Kairoos Minoo Bhaya .. Applicant.

Vs.

Chintan H. Kanakia & Anr. .. Respondents.

Mr.Brian D'Lima for the Applicant.

Mr.Mansi Sharad Mhambrey for Respondent No.1.

Mr.A.D.Khamkhedkar APP for the State.

CORAM : A. K. MENON, J.

DATED : 12TH JULY, 2017

P.C. :

1. By this application, the applicant seeks to challenge the order dated 7th March, 2016 rejecting an application seeking condonation of 452 days delay in filing the revision against the order passed by the Magistrate's Court on 3rd June, 2014. It is the applicant's case that he had filed C.C. No.99/SW/2011 against respondent no.1 in the Magistrate's Court in respect of offences under Section 420, 465, 456, 469, 471, 473, 474 and 476 read with 34 of Indian Penal Code. However, the complaint was dismissed. Thereafter the applicant approached this Court and filed a criminal application No.694 of 2015 on 8th July, 2015 i.e. one year after the order being passed by the Magistrate's Court. A copy of that application is annexed to this application and it is seen to be affirmed on 20th November, 2015.

2. The application came up for hearing before this Court on 20th November, 2015 and after hearing the parties the applicant sought leave to withdraw the application with liberty to file revision application before the Sessions Court. Leave was granted with liberty to do so. Thereafter it appears that the revision application was lodged in the Sessions Court on 28th November, 2015 i.e. within eight days. The application taken out for condonation of delay sets out only two reasons in paragraph 9 and 10 which read as under :

“9. The Applicant says that immediately after the said order was passed, the Hon'ble Courts reopened after summer vacations, and I was not in a position to give instructions to my Advocate, to file appropriate proceedings, as he was busy travelling for matters outside Mumbai.

10. The Applicant's mother is presently aged 83 years and she was not keeping well, due to old age. The Applicant had to attend to his mother and lost track of the matter, and to file appropriate proceedings to challenge the said impugned order.”

3. Mr.D'Lima, learned counsel for the applicant submits that in addition to the aforesaid reasons to be taken into consideration and the fact

that a period of 143 days were consumed in prosecuting the first criminal application bearing No.694 of 2015 in this Court has not been considered and ought to have been taken into consideration by the Sessions Court. However, the Sessions Court has proceeded to ignore the said fact. He invited my attention to paragraph 9 of the impugned order wherein the Sessions Judge has observed that after the Magistrate's Court passed the order on 3rd June, 2014 the applicant instead of filing revision in the City Civil and Sessions Court has chosen a wrong forum and therefore the protection as contemplated under Section 14 of the Limitation Act cannot be made available. He submitted that this is an error apparent and therefore the impugned order requires to be set aside and the delay needs to be condoned.

4. Mr.D'Lima also drew my attention to the decision of the Supreme Court in *Dhiraj Singh vs. Harayana State LEX (SC) 2014 7 107* and relied upon observations of paragraph 15 setting out the principles for condonation of delay particularly in land acquisition matters. He submitted that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated and it is not necessary to adopt a pedantic approach and explain everyday's delay.

5. I am unable to agree with Mr.D'Lima. Even assuming the fact that the applicant was bonafide prosecuting his application there is no explanation whatsoever for remaining 311 days delay. On a query from the Court as to

the reasons for this unexplained delay, Mr.D'Lima relied upon the averments in paragraphs 9 and 10, the contents of which are reproduced above. The averments in the application were also supported by verification by the present applicant. On a perusal of the reasons set out in paragraphs 9 and 10, I find that the same are devoid of any material particulars. Firstly, the applicant contends that he was busy travelling for matters out of Mumbai. At the same time he states that his mother is aged and not keeping well due to old age and he had to look after her and hence he lost track of the matter. The two reasons contradict each other. In the circumstances there is practically no explanation as to why no attempt was made to challenge the order within time. No explanation is given as to why the applicant approached the High Court in Application No.694 of 2015 only on 8th July, 2015. The applicant also did not set out reasons or seek to explain obvious delay in approaching the Court.

6. A perusal of the said criminal application, a copy of which appears at Exhibit-F contains reference to paragraph 8 which reads as follows :

“8. The petitioner has no other equally or alternative efficacious remedy, and the reliefs if granted, will give complete relief.”

Thus, according to the petitioner he had no equally alternate efficacious remedy. This statement is obviously incorrect in view of the fact that the revision application was equally maintainable as first alternate remedy and which the petitioner has not chosen to adopt.

7. Furthermore, in the petition before the High Court it was not even suggested that the delay was due to aforesaid reasons which are now mentioned in the application for condonation of delay before the Sessions Court. I find that apart from aforesaid paragraphs 9 and 10 there is not even an attempt to explain the delay that has occasioned firstly to approach this Court in Criminal Application No.694 of 2014.

8. In the circumstances I see no reason to interfere with the impugned order. I pass the following order :

(a) Application is dismissed.

(b) No order as to the costs.

(A.K. MENON, J.)