

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.504 OF 2015

IN

CRIMINAL REVISION APPLICATION (STAMP) NO.598 OF 2015

VIJAY SHRIPATI PATIL

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Dhairyasheel Sutar, Advocate for the Applicant.

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

Mr.Akshay Shinde, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 1st MARCH 2017.

P.C. :

1 This is an application for condonation of delay of 721 days in preferring a revision petition challenging the appellate order of conviction of the applicant / revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned advocate appearing for the applicant / accused. He argued that entire amount of compensation has already been deposited by the applicant / accused. He further drew my attention to pleadings in paragraphs 5 and 6 of the application in order to point out sufficient cause. As against this, the learned advocate appearing for respondent no.2 / original complainant argued that not a single document is produced on record to show that the applicant / accused was suffering from ailments as described by him in the body of the application.

3 Contentions in the application are made on affidavit. They are not countered by filing any counter affidavit. The applicant / accused is stating that he was suffering from ailment of heart as well as epilepsy during the relevant period and as such, was required to be hospitalized. According to the averments made in the application, the applicant / accused was not in a position to attend Mumbai for filing revision petition because of his ailment.

4 As the averments made in the application which are on affidavit and not controverted, there is no reason to disbelieve those averments. Similarly, the entire amount of compensation is already said to have been deposited by the applicant / accused. In the matter of Collector Land Acquisition Anantnag vs. Mst.Katiji & Ors.¹ the Hon'ble Apex Court has given following guidelines for condonation of delay. They read thus :

- “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,

1 1987 AIR 1353

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 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.”

5 In the wake of this position, I hold that applicant / accused was prevented by sufficient cause in not filing revision petition within limitation. Hence, the following order :

- i) The application is allowed.
- ii) Delay is condoned.

(A. M. BADAR, J.)