

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION NO. 166 OF 2016

(Brijlal Narsingdas Mantri and another..vs..State of Maharashtra, through PSO.PS.Sadar,Nagpur
and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.K.Thakkar, Advocate for applicants.
Shri N.B.Jawade, A.P.P. for State-respondent no.1.
Shri J.M.Gandhi, Advocate for respondent no.2.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 2, 2017

When this matter was called Shri R.K.Thakkar, the learned advocate for the applicants prayed for adjournment on the ground of non-availability of the senior advocate. The non-availability of senior advocate cannot be a ground for adjournment. Hence, prayer is rejected.

CRIMINAL APPLICATION (APPR) NO.191 OF 2016

1] This is an application for condonation of delay in filing the revision before this Court.

2] Heard learned advocate for the applicants. The revision is filed on 1/10/2016 against the order passed by learned Judicial Magistrate First Class(Court No.6), Nagpur in Regular Criminal Case No.3956/2015 dated 01/12/2015 and 31/3/2016.

3] The order dated 1/12/2015 shows that the chargesheet was presented against the applicants under

Section 299 of the Code of Criminal Procedure in the Court of learned J.M.F.C.(Court No.6),Nagpur for the offence punishable under Sections 403,406 and 420 of the Indian Penal Code, hence, the learned Magistrate issued non bailable warrants against the applicants.

4] The other order is dated 31/3/2016. By this order, learned Magistrate directed the Commissioner of Police to appoint Special Squad of Nagpur Police to execute non-bailable warrant against accused nos. 1 to 3.

5] The revision was barred by limitation and it was accompanied with an application for condonation of delay. According to the applicants, the delay was of 94 days. Though, it is stated in the application that the certified copy of the order and chargesheet was applied on 22/8/2016 and copy was received on 30/8/2016,conveniently the applicants have not disclosed the dates of the knowledge of the impugned orders.

6] Normally, the Court should be liberal in granting the application for condonation of delay. However, at the same time the Court can also look into the conduct on the part of the applicants.

7] In the present case, initially petition under Section 482 of the Code of Criminal Procedure was moved by the applicants and others for quashing of the F.I.R. The said application was registered as Criminal Application (APL) No.

802/2014. The interim relief was granted in favour of the applicant in the said petition. On 23/9/2015 the learned counsel appearing in Criminal Application (APL) No.802/2014 states before the Division Bench that the applicant in that case, so also applicant in the present case are not cooperating and therefore the learned counsel has served a notice of withdrawal of his vakalatnama. The Division of this Court (Corum: B.R.Gavai and Prasanna B.Varale,JJ.) passed the following order.

“ The learned counsel for the applicants states that the applicants are not cooperating and as such they are served with a notice seeking withdrawal of power. A pursis, dated 21/9/2015 is filed on record alongwith a copy of the notice issued to the applicants and a copy of acknowledgements showing that the petitioners have left the address.

It appears that the applicants are not interested in prosecuting the application. In that view of the matter, the counsel for the applicants is discharged. The application is dismissed for want of prosecution.”

8] Thereafter, Criminal Application Nos. 876/2016 and 875/2016 were filed by the applicants through learned Advocate Shri R.K.Thakkar. The said applications were for condonation of delay in filing application for restoration and the application for restoration of Criminal Application No.802/2014. Those were listed before Division Bench of this Court (Corum: B.R.Gavai and V.M.Deshpande,JJ.) on

1/8/2016 and after hearing learned counsel Shri R.K.Thakkar passed the following order.

“ Heard.

For the reasons stated in Criminal Application no.876/2016,same is allowed. Delay is condoned.

Cri.Appln.No.875/2016

Heard.

For the reasons stated in the Criminal Application, same is allowed. Criminal Application No.802 of 2014 is restored to file.

Criminal Application No.802 /2014

The criminal application is taken up for admission.

The learned counsel for the applicants seeks liberty to withdraw the present criminal application with liberty to make an application for discharge. The Criminal Application is disposed of as 'withdrawn' with liberty, as prayed for.”

9] Thus, Shri R.K.Thakkar, learned counsel sought liberty to withdraw the application with a liberty to move an application for discharge. The impugned orders are passed prior to 1/8/2016. In that context, non-disclosure of the date of the knowledge of passing of the impugned order in the application for condonation of delay assumes importance.

10] In the present proceeding, on 5/10/2016 this Court ordered that non-bailable warrant issued against the applicants shall not be executed and the case was fixed for

filing of the reply on behalf of the non-applicant on 13/10/2016. On the said date, interim protection was extended by this Court till next date and the matter was stand over to 26/10/2016. On 26/10/2016 also the matter was adjourned and it was kept on 27/10/2016.

On 16/11/2016 the matter was adjourned on non-availability of the senior advocate. The farad order dated 16/11/2016 shows that writ issued to the applicant nos. 1 and 2 to remain personally present in the Court was awaited. On 9/6/2017 also the report was awaited.

11] Thus, in the aforesaid back drop, it is clear that the applicants are trying to protract the case. No satisfactory reason is given by the applicants for seeking the condonation of delay. In the given set of facts I am of the view that this is not the case where this Court should exercise discretion in favour of the applicants to condone the delay. Consequently, the application for condonation of delay and revision are dismissed.

JUDGE