

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1444 OF 2017

Syed Shaukat S/o Syed Jabbar,
Age : 50 years, Occu. Business,
R/o Phulambri, Tal. Phulambri,
District Aurangabad.

... **Petitioner**

Versus

1. The State of Maharashtra,
2. The Police Inspector,
Phulambri Police Station,
Phulambri, Tal. Phulambri,
Dist. Aurangabad.
3. Ambadas Abaji Mankape,
Age : 75 years, Occu. Business,
R/o Plot No.31, Shivjyoti Colony,
N-6, CIDCO, Aurangabad.

... **Respondents**

...

Mr. Mobin H. Shaikh, Advocate for Petitioner
Mr. S.P.Deshmukh, APP for Respondent-State
Mr. R.R.Pund h/f Mr. V.B.Garud, Advocate for
Respondent No.3

...

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 18.06.2018

PRONOUNCED ON : 27.06.2018

JUDGMENT :-

Rule. Rule is made returnable forthwith. With the
consent of both the sides the matter is heard finally.

2. The facts leading to the filing of the Writ Petition may be summarized as under :

Respondent No.3 filed Regular Criminal Case No.118 of 2014 against the petitioner inter alia alleging that he was the owner in exclusive possession of a portion admeassruing 2 Hector 17 Are. out of land Gut No.104 of village Phulambri, District Aurangabad. He had purchased the land from the erstwhile owner and was enjoying exclusive possession therein. A mutation in the revenue record was also effected. The petitioner was his neighbour holding adjoining land. Annoyed by Respondent No.3 having purchased the adjoining piece of the land the petitioner started harassing him and also started obstructing his possession. It was then alleged that on 11.07.2014 and 12.07.2014 the petitioner forcibly entered into the land and stole away the tractor of Respondent No.3. A direction for investigation as contemplated under Section 156(3) of the Cr.P.C. was solicited.

3. The learned Judicial Magistrate First Class by the order dated 11.11.2014 exercised the powers and directed investigation under that provision. Accordingly the First Information Report No.167 of 2014 was registered on 04.12.2014 for the offences punishable under Section 379, 323, 339, 411, 441, 504, 506 read with Section 34 of the Indian Penal Code against the petitioner and 4 to 5 other persons.

4. It appears that in the month of July 2015 the petitioner preferred Criminal Application No.2584 of 2015 in this Court seeking quashment of the FIR. By the order dated 09.09.2015 the Division Bench disposed of that proceeding and granted liberty to the petitioner to file revision against the order passed under Section 156(3) of the Cr.P.C. The Division Bench also granted him liberty to apply for exemption under Section 14 of the Limitation Act by keeping open all the points.

5. Pursuant to such liberty, the petitioner filed Criminal Revision along with Criminal Miscellaneous

Application No.219 of 2015 in the Court of Sessions at Aurangabad seeking condonation of delay in preferring the revision. After narrating the facts it was inter alia pointed out that the application for condonation of delay was being preferred in accordance with the liberty granted by this Court. The time was spent bona fide by filing the Criminal Application in the High Court and which had caused a delay of 215 days in challenging the order passed under Section 156(3) of the Cr.P.C.

6. It is also necessary to note at this juncture that during the course of litigation since in the mean time the process was directed to be issued by the learned Magistrate by the order dated 21.05.2015, even that order was sought to be challenged and even a delay of 30 days in challenging that order was sought to be condoned.

7. The learned Additional Sessions Judge, Aurangabad by the order dated 07.09.2017 rejected the Criminal Miscellaneous Application No.219 of 2015 and refused to condone the delay in preferring the revision.

This order is now being impugned in this Writ Petition.

8. The learned advocate for the petitioner would vehemently argue that this Court had specifically granted the petitioner liberty to prefer the Revision and apply for condonation of delay seeking exemption under Section 14 of the Limitation Act. He would submit that though the order under Section 156(3) was passed on 11.11.2014, since he was not a party to that proceeding, the petitioner got its knowledge in the month of March 2015. Promptly thereafter he had applied for a certified copy of the order passed by the learned Magistrate and had under an erroneous belief preferred the Criminal Application. Pursuant to the directions of the High Court, he had preferred the Criminal Revision in the same month that is September 2015, promptly after the order of the High Court was passed on 09.09.2015. The learned advocate would further point out that apart from pointing out the illegalities in the order passed by the Judicial Magistrate, the ground for causing the delay was also explained. Ignoring all these facts, the learned Additional Sessions Judge has refused to

condone the delay. The order is illegal and may be set aside.

9. Lastly, the learned advocate would argue that it is expected that every litigants should get an opportunity to seek justice on merits rather than by default. The consequence of the order refusing to condone the delay would prevent him from securing the justice on merits and therefore the impugned order may be quashed and set aside and by condoning the delay the learned Additional Sessions Judge may be directed to decide the Criminal Revision on merits.

10. The learned APP requests to decide the Writ Petition on merits.

11. The learned Advocate for Respondent No.3 by referring to the affidavit-in-reply would strongly oppose the petition. He would submit that though a liberty was granted by this Court to the Petitioner to apply for condoning the delay by seeking exemption under Section 14 of the Limitation Act, the direction was only to enable him to approach the learned Additional Sessions Judge.

This Court had not expressed genuineness or otherwise of the ground contemplated under Section 14 of the Limitation Act. It was therefore imperative on the part of the petitioner to have explained the delay and to have established a sufficient cause for condoning it before the learned Additional Sessions Judge but he has miserably failed to do so. He did not lead any oral evidence to substantiate the ground and no fault can be found with the order of the learned Additional Sessions Judge in refusing to condone the delay since no sufficient cause was established before him.

12. At the outset, it is necessary to bear in mind that the question of limitation is a mixed question of facts and law. It is therefore obligatory on the part of a person seeking condonation of delay in preferring a proceeding to factually establish the cause which according to him is sufficient and had prevented him from approaching the Court in the time prescribed by the Limitation Act. Simultaneously, it is also made obligatory by virtue of Section 3 of the Limitation Act that irrespective of the fact whether any defence has

been raised by the other side, to examine whether the proceeding is within limitation.

13. Bearing in mind these trite prepositions, if one examines the matter in hand it is sufficiently clear that the petitioner had miserably failed to establish just and sufficient cause which would have enabled the learned Additional Sessions Judge to invoke the power under Section 5 of the Limitation Act to condone it.

14. Needless to state that by virtue of Article 131 in the Schedule to the Limitation Act, 1963, limitation for challenging any order in revision before a Sessions Court is 90 days from passing of the order under challenge. It nowhere lays down that the starting point to compute the period should be the date of knowledge of the order.

15. The petitioner was coming with a specific case that he had got the knowledge of the order passed by the learned Magistrate under Section 156(3) of the Cr.P.C. in the month of March 2015. He then apparently approached this Court by preferring Criminal

Application No.2584 of 2015 in the month of July 2015. It is thus apparent that since after March upto filing of the Criminal Application in this Court he had already lost sufficient time. Even thereafter when this Court passed the order on 09.09.2015 he preferred the Criminal Revision in the same month. Thus in aggregate he had spent at least the month of April, May, June and some more days in July to prefer Criminal Revision. It is to be remembered that by virtue of Section 14 of the Limitation Act, 1963 the period spent before the wrong forum is eligible to be excluded while computing the period of limitation. If that be so, it was expected of the petitioner to have explained as to why and how he has utilized that time and still could not prefer the Criminal Revision in time. That having not been done by the petitioner, no fault can be found with the observations and conclusions of the learned Additional Sessions Judge in refusing to condone the delay.

16. Apart from the above state of affairs, at the cost of repetition it needs to be emphasized that all such

discussion is academic inasmuch as we are proceeding on the premise that the petitioner acquired knowledge about passing of the order by the Judicial Magistrate in the month of March 2015 though the order was passed on 11.11.2014. Obviously it is a pure question of fact and the burden to establish it was always on the petitioner. However, for the reasons best known to him no attempt was made to prove this fact by leading any evidence. Perhaps the petitioner was under a mistaken belief that once this Court had granted him liberty to apply for exemption under Section 14 of the Limitation Act, he was not under any further obligation to establish any other fact. That is not the case.

17. The order passed by the Division Bench of this Court in Criminal Application No.2584 of 2015 dated 09.09.2015 and particularly Paragraph No.2 reads thus :

“2 Liberty is also in favour of the Applicant to apply for exemption under Section 14 of the Limitation Act. All points are kept open.”

18. A bare look at the observations and the directions would clearly reveal that only a liberty was granted to the applicant / petitioner to apply for exemption under Section 14 of the Limitation Act and no finding or observation was recorded that he was entitled to it in law. These observations could not have been taken as taking away the powers of the learned Additional Sessions Judge to independently scrutinize whether there was just and sufficient cause for the petitioner not to prefer the Criminal Revision within the statutory time limit. Whatever may be the case, the fact remains that in spite of the issue of limitation being a mixed question of law and fact, no attempt was made by the petitioner to establish the vital facts and thus he has been unable to justify the delay.

19. It is trite that it is always appropriate to allow the rights or rival claims to be decided on merits rather than by default. However one cannot lose sight of the fact that a balance has to be struck in as much as a right accrues in favour of the other side if a litigation is not preferred within the statutory period. Bearing in

mind all these aspects, the material on the record clearly demonstrates that the petitioner was unable to establish just and sufficient cause under Section 5 of the Limitation Act and consequently even if he was to be given any benefit of Section 14 of the Limitation Act as directed by this Court, still he had miserably failed to establish any just and sufficient cause. No fault can be found with the observations and conclusions of the learned Additional Sessions Judge in refusing to condone the delay.

20. Writ petition is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

...

vmk/-