

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 190 OF 2018
IN
STAMP NUMBER MAIN NO. 3050 OF 2016

JOAO FRANSISCO DE SOUZA ... Applicant

Versus

MAC ENTERPRISES THR. ITS
PROPRIETOR, ALFREDO M.
COTTA AND ANOTHER ... Respondents

Shri Ryan Menezes, Advocate for the applicant.

Shri Vivek Rodrigues and Shri Vithal Naik, Advocates for the respondent no.1.

Shri Pravin Faldessai, Additional Public Prosecutor for the respondent no.2.

CORAM:- C.V. BHADANG, J.

DATE:- 12th OCTOBER 2018

P.C:

This is an application for condonation of delay in filing an application for leave to appeal against acquittal.

2. The applicant had filed a complaint against the first respondent under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short), which was registered as Criminal Case No.OA/367/2010/B on the file of the learned Judicial Magistrate, First Class at Panaji. The learned Magistrate, by a judgment and order dated 21/06/2013, has acquitted the respondent no.1. It appears that the applicant was employed abroad at London from

April, 2011 to December, 2012. The applicant returned to India on 07/01/2013 and found himself embroiled in a matrimonial dispute with his wife. According to the applicant, his wife did not permit him to enter the matrimonial house and he was left without any shelter. Further, according to the applicant, he is staying along with his sister and is unemployed. This is the solitary ground, on which condonation of delay is sought.

3. The record discloses that the applicant file the application for leave to appeal against acquittal on 14/09/2016, where there was a delay of 1139 days in filing that application. Significantly enough, the application for leave to appeal against acquittal was not accompanied by an application for condonation of delay. The application for condonation of delay was filed on 05/03/2018. Thus, although in the application, condonation of delay is sought of 1139 days, the delay, if computed upto 05/03/2018, works out to 1914 days.

4. The first respondent has resisted the application on the ground that no sufficient cause has been made out by the applicant for not filing the application within time and the delay is not properly explained.

5. I have heard Shri Menezes, the learned Counsel for the

applicant and Shri Rodrigues, the learned Counsel for the first respondent.

6. It is submitted by Shri Menezes, the learned Counsel for the applicant that the applicant was prevented by a cause beyond his own control, from filing the application within time, in as much as, there was a matrimonial dispute between the applicant and his wife, which the applicant had to face on his return from abroad. It is submitted that the applicant found himself without any job and shelter. This prevented the applicant from taking steps in filing the application within time.

7. On the contrary, it is submitted by Shri Rodrigues, the learned Counsel for the respondent no.1 that the reason as shown is not sufficient for the applicant, for not taking steps to file an application for leave to appeal in time. Reliance is placed on the decision of the Delhi High Court in the case of **Neena Sinha Vs. Union of India and Ors.** decided on 30/11/2007 and the decision of the Supreme Court in the case of **D. Gopinath Pillai Vs. State of Kerala and Anr.**, decided on 15/01/2007.

8. It is now well settled that for an order of condonation of delay, the party has to demonstrate that he has sufficient cause for not approaching the Court within time. The Hon'ble Apex

Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy**, (2013)12 SCC 649, after taking a survey of several decisions holding the field, has laid down the principles, which are germane while considering the prayer for condonation of delay. It has been inter alia held that although the Court can take a liberal view in the matter, where the delay is of short duration, a strict view has to be taken, where there is substantial delay of gross nature as in the present case. The Delhi High Court in the case of **Neena Sinha** (supra) had refused to condone the delay of 129 days on similar ground of there being a marital dispute between the parties.

9. Be that as it may, in my considered view, the cause shown by the applicant cannot be said to be a sufficient cause, on account of which, the applicant can be said to be prevented from taking steps in filing the application for leave to appeal against acquittal within time. As noticed earlier, the application for leave to appeal was initially filed on 14/09/2016 without any application for condonation of delay and the application for condonation of delay itself came to be filed about 515 days thereafter. The overall conduct of the applicant clearly shows that the applicant has not acted diligently in approaching the Court. Thus, no case for condonation of delay is made out. The application is hereby dismissed. The registration of Criminal Appeal/ Stamp Number

Main No. 3050/2016 and Criminal Application / Stand Number
Application No.3051/2016 stands refused.

C.V. BHADANG, J.

SMA