

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

CRIMINAL WRIT PETITION NO.322 OF 2017

M/s.Buildarch, A Partnership Firm & Anr. .. Petitioners

Vs.

The State of Maharashtra & Anr. .. Respondents

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Mr.Kuldeep Patil a/w. Mr.Ranjit Patil, Mr.S. Kadam, Ms.Sayalee Rajpurkar i/b. Kadam & Co., Advocate for the Petitioners.

Mr.Y.M. Nakhwa, APP for the Respondent – State.

Mr.Vishal L. Kalekar, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 17, 2018.

P.C. :

The petitioner is prosecuted for the offences punishable under Sections 13, 3(i) and 11 of the Maharashtra Ownership of Flats Act, 1963. The proceedings are pending before the Court of learned Metropolitan Magistrate 5th Court, Dadar, Mumbai.

2 Being aggrieved by the order issuing process, the petitioner had preferred Revision Application before the Sessions Court. Since there was a delay of about 226 days in preferring the Revision Application, the petitioner preferred an application

for condonation of delay. This application was rejected by the Sessions Court by order dated 4th January, 2017.

3 It was contended by the petitioner that his mother was ailing and subsequently she expired. She was also impleaded as one of the accused in the said complaint. The father of the petitioner was also impleaded as an accused, had expired. The learned Sessions Judge while rejecting the application for condonation of delay, has observed that the applicant had failed to show sufficient cause to condone the delay of more than 225 days.

4 Mr.Patil, learned counsel for the petitioner submits that sufficient cause was shown in the application for condonation of delay. The Sessions Court has taken a hyper-technical view in rejecting the application and refused to condone the delay. Learned counsel for the respondents submits that there was no proper explanation for condonation of delay. The learned Session Judge has passed the order by assigning reasons for not condoning the delay.

5 On going through the order passed by the Court and

the application for condonation of delay preferred by the petitioner, it is apparent that reasons were assigned for preferring the Revision Application after 225 days. While dealing with the application for condonation of delay, it is not expected that the Court would adopt rigid and hyper-technical approach each and every day delay is not required to be explained. The Court could have taken into consideration the fact that there was death in the family of the petitioner and in the interest of justice an opportunity ought to have been given to the petitioner to contest the proceedings on merits.

5 In the circumstances, the order dated 4th January, 2017, is required to be set aside and the delay has to be condoned.

6 Hence, I pass the following order:

:: ORDER ::

- (i) The impugned order dated 4th January, 2017, passed by the Additional Sessions Judge, Sessions Court in Miscellaneous Application No.1363 of 2016, is quashed and set aside;

- (ii) The delay of 226 days in preferring Criminal Application against the order dated 28th July, 2015, passed by the learned Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Mumbai in C.C.No.0501147/SS/2014, is condoned;
- (iii) Learned Sessions Court is directed to hear the Revision Application on merit and decide the same in accordance with law.
- (iv) The petitioner is directed to pay costs of Rs.2,000/-, to respondent no.2;
- (v) Criminal Writ Petition stands disposed of;
- (vi) It is submitted that the next date before the trial Court is 19th July, 2018. Hearing of the Revision Application would take some time. In the circumstances, the petitioner is exempted from appearing before the trial Court on 19th July, 2018, the next date of hearing.

(PRAKASH D. NAIK, J.)