

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

**CRIMINAL APPLICATION NO. 158 OF 2017
IN
CRIMINAL REVISION APPLICATION (ST) NO. 166 OF 2017**

Vipul Mansukhlal Sanghvi ...Applicant
Versus
Hetal Vipul Sanghvi @
Hetal Bhupendrabhai Shah And Anr ...Respondents

Mr.Paras N. Vira for the Applicant.

Mr.Shashank Thatte a/w Ms.Ketaki Asgaonkar for Respondent No.1.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 19th MARCH 2018

P.C.

1. The present Criminal Application has been taken out by the applicant seeking condonation of delay of one year and 248 days in filing the Revision Application challenging the order passed by the Family Court on 04th February 2015, by which the applicant has been foisted with the liability of payment of maintenance of Rs.10,000/- per month to the wife and Rs.15,000/- towards the daughter. The application has been taken out praying for condonation of delay and the reasons for condoning the delay are set out specifically in paragraph Nos.7 and 8 of which are

reproduced below :-

“7) Thereafter, the applicant made an attempt to arrange for the money to avail legal services and appoint advocate. To make an arrangement applicant took 15 to 20 days time and thereafter in the last week of November 2016 contacted the present advocate and instructed him to take further proceedings. After taking instructions of the Applicant and after working out the proceedings the present advocate has prepared and drafted the present application. However, inadvertently the present advocate has filed an appeal against the said order granting reliefs of the maintenance, the said appeal has been lodged before this Hon'ble Court on 07.01.2017 and the same has been withdrawn on 04th February, 2017 and after taking further instructions, my advocate has drafted the present application and the same has been filed on 08th February, 2017, before this Hon'ble Court.

8) The applicant therefore say that the delay has been caused in filing of the present Application for the reasons as stated above which were beyond the control of the Applicant. Applicant crave leave to rely upon medical paper. Hereto annexed and marked as Exhibit-1 is the copy of certificate issued by the psychiatrist with support of the contentions of the applicant of his mental depressions.”

2. The learned counsel for the applicant would submit

before this Court that even if there is delay in filing proceedings the Court should take into consideration that the delay is to be liberally condoned if it delivers “Substantial justice”. He places reliance on a judgment of this Court in the case of Sonera Sadashirao Patil V/s. Godawari where the learned Single Judge of this Court (Justice D.B. Vaghyani) has held that the primary function of any Court is to adjudicate the dispute between contesting parties and to advance substantial justice. The Court has further held that the rules of limitations are not to be applied so as to harm the valuable rights of the parties and the discretion given to condone the delay, is ought to be exercised by the Court to deliver substantial justice.

3. The said proposition of law is not in dispute. No doubt the provisions for condonation of delay permit the delay to be condoned where sufficient ground has been shown to condone the delay and this Court to exercise the said discretion with a view to grant substantial justice, not only to one of the litigant but also to both the sides who are party to litigation.

4. Perusal of the application for condonation of delay would reveal that there were two foremost grounds on which the delay is sought to be condoned. Paragraph No.8 of the application

sets out that the applicant was under going a Medical Treatment and since, he was suffering from mental depression. In support of the said contention, a certificate from the Doctor Shri.Dilip Joshi consulting psychiatric dated 30th November 2016 is placed on record. The said certificate certifies that the applicant is suffering from depression from 15th April 2015 till today and is undergoing treatment. As far as the said ground is concerned, it is surprising as to how the medical certificate categorically shows that the applicant is suffering from depression from 15th April 2015 and the certificate is issued on 30th November 2015 when, the order sought to be challenged in Appeal is dated 04th February 2015. The certificate does not give any details about the type of depression. The specific query put to the learned counsel for the applicant as to whether the applicant was totally out of business and not participating in any business activity during the said period, his stand is that the business that is carried on is a family business and it is not dependent solely on him. It can be seen from the certificate that merely because that the person is suffering from depression cannot be said to be a serious medical ailment holding the filing of proceedings and this Court do not find any justification so as to treat the same as sufficient cause to condone the delay.

5. Another ground which is mentioned in paragraph No.7 warrants a consideration since it is stated that advocate who was instructed to file an appeal against the order granting relief for maintenance, lodged the same on 07th January 2017 on the Civil side. However realizing that it is not maintainable on Civil side it came to be withdrawn on 04th February 2017 and subsequently it came to be filed on criminal side on 8th February 2017. No doubt the applicant needs to be given benefit on this Court, since there was a mistake on the part of the advocate in filing of the proceedings on the appropriate side of this Court. However, at the most this can be a excuse for not filing an appeal between 07th January 2017 to 18th February 2017. But for condoning the major portion of the delay caused that is from 04th February 2015 to 07th January 2017, barring the reasoning that is stated in paragraph No.8 no explanation has been offered.

6. In contrast, the learned counsel for the respondent has filed a reply. He categorically makes a statement that the certificate of mental illness and treatment of depression which has been annexed to the application was not made available to him and therefore he has not commented upon the same. However, he has highlighted the conduct of the applicant in his reply and

categorically made a statement that the delay need not be condoned since the applicant has failed to comply the order passed as long as in February 2015 and has not paid any amount of maintenance as ordered. Resultantly the respondent had instituted proceedings for execution for getting the order implemented. The learned counsel for the respondent therefore, vehemently opposes the said application and prays for its rejection.

7. On consideration of the authorities cited by the applicant and specifically by referring to the judgment in the case of ***Collector Land Acquisition, Anantnag and Another V/s.Mst. Katiji and Other***¹, it is seen that the said judgment deals with a special approach to be adopted while condoning the delay that has occasioned on account of the working of State Government and specifically on account of the impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing and passing on the buck ethos, delay on the part of the State and in such circumstances the Hon'ble Apex Court has held that the appeals filed by the State Government where the delay has occasioned had to be looked into from a different irrespective. It is not understood as to how this judgment comes to the rescue of the

1 AIR 1987 SCC 1353

present applicant. The applicant has not given any justification for condonation of delay except the one which has been stated in paragraph No.8. I have already recorded that the said reasoning given is not satisfactory and what is annexed is only a medical certificate which makes a mention that the applicant was suffering from “Depression”. What is nature of depression and to what extent is incapacitated the applicant from taking any decision, including the decision to file an appeal or to initiate any proceeding or whether it had created an embargo on the petitioner to indulge into any such type of decision making process is not very clear. The term depression used very widely cannot be taken recourse to and it cannot be said that it incapacitated, the applicant from initiating any proceedings for the period of almost 1 and ½ year.

8. In such circumstances there is no reason to condone the delay the application is dismissed.

(SMT.BHARATI H. DANGRE, J.)