

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

CRIMINAL APPLICATION NO. 367 OF 2016

Vasudeo alias Sudhir Mahadeo Khot .Applicant
Aged : 46 yrs, Occu : business
R/o. L – 3, D – Wing, 504, Sankalp
C. H. S. L., Pratiksha Nagar,
MHADA Colony, Sion,
Mumbai – 400 022.

Vs.

1. The State of Maharashtra .Respondents
2. Mahadeo Vasudeo Khot
3. Ulhas Mahadeo Khot

All R/o. 2/22, Nanabhai Chambers,
G. K. Road, Naigaon,
Mumbai – 400 014.

Mr. R. P. Jawanjal a/w Mr. A. Gawand, Advocate, for the Applicant
Ms V. S. Mhaispurkar, APP, for the Respondent No. 1 – State
Mr. D. G. Naik, Advocate, for the Respondent Nos. 2 & 3

CORAM : REVATI MOHITE DERE, J.

DATE : 04.01.2018

ORAL ORDER

. Heard learned counsel for the parties.

2. Rule.

3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal.

4. By this Application, the Applicant has impugned the Order dated 21.01.2016 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay, by which the Applicant's Misc. Appln. No. 2969 of 2015 (for delay condonation) filed in Cri. Revision Application No. of 2015 (unregistered) came to be rejected.

5. Learned counsel for the Applicant states that the learned Judge ought to have condoned the delay of 117 days which had occurred in filing the Cri. Revision Application. Learned counsel for the Applicant has placed on record the Medical Certificates of his mother-in-law to show that soon after the impugned Order dated 09.04.2015 was passed, the Applicant was required to take care of his mother-in-law in April, 2015. He submits that the delay is neither deliberate nor intentional and as such, the learned Judge ought to have condoned the same in the interest of justice.

6. Learned counsel for the Respondents vehemently opposed

the Application and submitted that no interference was warranted in the impugned Order dated 21.01.2016. He submitted that the Applicant had failed to bring on record any document before the Revisional Court, to show that his mother-in-law was suffering from any illness, resulting in filing the Cri. Revision Application belatedly.

7. Perused the papers including the impugned Order dated 21.01.2016. Being aggrieved by the Order dated 09.04.2015 passed by the learned Magistrate, the Applicant had filed Cri. Revision Application in the Sessions Court, along with Misc. Appln. No. 2969 of 2015 (for condonation of delay). In the said delay condonation Application, it was mentioned that at the time when the impugned Order dated 09.04.2015 was passed, the Applicant was mentally confused and soon thereafter, as his mother-in-law was unwell, he had rushed to Malvani to look after her. Admittedly, no medical papers were placed on record by the Applicant before the Revisional Court and therefore, the learned Judge rightly observed that except bare words, there was no material on record to show that the Applicant's mother-in-law was unwell and as such, refused to condone the delay. The Applicant has in the present Application filed documents to show that his mother-in-law was unwell

in April, 2015.

8. The delay caused in filing the Cri. Revision Application is neither deliberate nor intentional and as such, the delay of 117 days caused in filing the Cri. Revision Application ought to be condoned. Accordingly, the following order is passed.

O R D E R

- (i) Application is allowed;
- (ii) The delay of 117 days caused in filing the Cri. Revision Application is condoned;
- (iii) The Order dated 21.01.2016 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay in Misc. Appln. No. 2969 of 2015 is quashed & set aside;
- (iv) Registry of the Sessions Court to number the Cri. Revision Application;
- (v) Applicant to pay costs of Rs. 5000/-, to each of the Respondents i. e. Respondent Nos. 2 & 3 within three weeks from today;
- (vi) The learned Sessions Judge to hear the Cri. Revision Application on its own merits in accordance with law;

(vii) Hearing of the Cri. Revision Application is expedited. Till the Cri. Revision Application is decided, the trial Court shall not proceed with the proceedings;

(viii) It is made clear, that this Court has not gone into the merits of the case and as such, all contentions of both the parties are kept open.

Rule is made absolute in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)