

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

CRI. REVISION APPLICATION NO.675 OF 2016

The State of Maharashtra	.. Applicant
Vs.	
Subhash Nathmal Mutha & Ors.	.. Respondents

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Ms.V.S. Mhaispurkar, APP for Applicant – State.
Mr.L.N. Karde a/w. Mr.Kunal Kamble, Advocate for the Respondents.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 5, 2018.

P.C. :

Applicant is the State of Maharashtra. Application is preferred against the order dated 5th September, 2014, passed by the Sessions Court at Dindoshi, Mumbai.

2 The respondents – accused were prosecuted for the offence punishable under Section 406, 420, 467, 468, 471, 507-II read with Section 34 of the IPC. The accused were tried before the Court of additional Chief Metropolitan Magistrate 24th Court, Borivali, Mumbai in C.C. No.2400911/PW/21009. Learned Magistrate by judgment and order dated 7th June, 2012, acquitted the respondents – accused of the offences.

3 Applicant preferred an Appeal against order of acquittal before the Sessions Court at Dindoshi, Goregaon, Mumbai. However, Appeal was preferred beyond the limitation prescribed by law. Hence, Misc. Application No.152 of 2013, was preferred by the Applicant / State. There was a delay of about 400 days in filing the said Appeal challenging the order of acquittal. Learned Sessions Judge dismissed Misc. Application No.152 of 2013, by declining to condone the delay. Hence, State has preferred this application challenging the order dated 5th September, 2014.

4 Learned Sessions Judge while rejecting the Misc. Application for condonation of delay, was pleased to observe that there was a delay of about 400 days in presenting the Appeal. Section 5 of the Limitation Act provides for extension of period for filing the Appeal, if sufficient cause is shown. The applicant failed to show any cause for condonation of delay. The explanation was vague. The Court also referred to several decisions relied upon by the respondents. Prosecution has not shown any circumstance to apply different approach in the condonation of delay. It is also observed that some vague contentions were raised which would not be sufficient to say that

there was sufficient cause for delay in presenting the Appeal. Condonation of delay of long period of 400 days would render provisions of Limitation Act nugatory. Hence, the application was dismissed.

5 Learned APP appearing for the applicant submits that the Sessions Court ought to have condoned the delay. The applicant should have been permitted to contest the proceedings on merits. It is submitted that the accused were acquitted vide judgment and order dated 7th June, 2012. The order of acquittal was received by the department on 3rd August, 2012, and, thereafter, the papers were forwarded for legal opinion to the Director of Prosecution. The Director of Public Prosecution vide letter dated 4th August, 2013, forwarded Appeal proposal against order of acquittal mentioning the crucial law point involved in the matter with explanation that the order of acquittal is to be challenged by preferring an Appeal before the appropriate Court. On account of administrative exigencies, the file of the Appeal remains pending and no appropriate decision could be taken. Sanction was accorded by the learned District Collector vide letter dated July 2013 which was signed on 1st August, 2013. Copy of the sanctioned was received by the office of the Assistant

Director of Public Prosecution and it was communicated that there was delay of 360 days in preferring the Appeal and, thereafter, the concerned Tahasildar was requested to bring it to the notice of the District Collector to submit an affidavit along with application for condonation of delay. After receipt of the letter, the Collector instructed the Tahasildar to take appropriate steps in the matter. Vide letter dated 22nd November, 2013, it was communicated from the office of the District Magistrate by the Executive Magistrate to the Additional Public Prosecutor, Dindoshi Sessions Court, Mumbai that the the collector has taken cognizance of the said letter and has deputed Tahsildar as signing authority and authorized him to sign the memo of delay condonation application as well as affidavit to that effect. In the process, there was a delay in preferring the Appeal.

6 Learned advocate for the respondents submitted that there was complete inaction on the part of the applicants in preferring Appeal against order of acquittal. There is delay of about 400 days, which is not explained. The lapses on the part of the authorities in forwarding the documents for appropriate action has resulted in delay which cannot be condoned. The applicant is required to explain the delay. There was no proper

explanation offered by the State except mentioning some dates and factual aspect relating movements of files. The learned counsel relied upon the decision in the case of ***State of U.P. Executive Engineer & Anr. Vs. Amarnath Yadav***¹. In the said decision, it was observed by the Hon'ble Supreme Court that there was no sufficient explanation for condonation of delay. The government bodies ought to have taken steps and should offer reasonable and acceptable explanation for delay and they must show that there was bonafide effort in pursuing the remedies. They are required to perform their duties in diligence and commitment. Learned counsel also relied upon the decision in the case of ***Postmaster General & Ors. Vs. Living Media India Limited & Anr.***² In the said decision also the Supreme Court has observed that condonation of delay is an exception and should not be used as an anticipated benefit for the government departments and offering explanation that file was kept pending due to considerable degree of procedural red tape, cannot be accepted and the delay cannot be condoned unless sufficient cause is shown.

7 Respondents-accused were prosecuted for the aforesaid offences. Accused were acquitted by the trial Court vide

1 2014 AIR SCW 1074

2 (20120 3 SCC 563

judgment and order dated 7th June, 2012. The department concerned have pursued the remedy of Appeal against the order of acquittal, and sought sanction for filing Appeal. It is true that there was inaction and delay at certain levels. It cannot be said that there was deliberate inaction on the part of the authorities. It is pertinent that after receipt of the order of acquittal, the same was forwarded for legal opinion for the Director of Prosecution and from Director of Prosecution to the District Magistrate for obtaining sanction. The sanction was, thereafter, accorded. On account of administrative exigencies, file remained pending before the learned District Magistrate and no appropriate decision could be taken up immediately.

8 The Hon'ble Supreme Court in the case of Collector, Land Acquisition, **Anantnag & Anr. Vs. Mst.Katiji & Ors.**³, has observed thus:

“3 The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause"

3 (1987) 2 SCC 107

employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- 1 *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2 *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3 *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

- 4 *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5 *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6 *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no

warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay.”

9 In the circumstances, the applicant must be given an opportunity to challenge the order of acquittal on merits. The Appellate Court ought not to have dismissed the application for condonation of delay. Hence, this application deserves to be allowed.

10 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Revision Application No.675 of 2016 is allowed;
- (ii) The order dated 5th September, 2014, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Dinodishi, Mumbai in M.A.No.152 of 2013, is set aside and the delay in preferring the Appeal against judgment and order dated 7th June, 2012, passed by the

Additional Chief Metropolitan Magistrate 24th
Court, Mumbai in C.C.No.2400911/PW/2009, is
condoned;

- (iii) The Sessions Court at Dindoshi, Mumbai is
directed to hear Criminal Appeal Stamp No.46
of 2013, on merits and decide the same in
accordance with law;
- (iv) Criminal Revision Application stands disposed
of.

(PRAKASH D. NAIK, J.)