

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

CRIMINAL WRIT PETITION NO. 4615 OF 2017

Mrs. Lata Ranjit Sachdev	... Petitioner
Vs.	
Jayesh Jayantilal Mistry & Ors.	... Respondents

...

Mr. Nagendra S. Dube for the Petitioner.
Mr. Madhukar P. Dalvi for the Respondents.
Mrs. M.R. Tidke, APP for the Respondent-State.

...
CORAM : PRAKASH D. NAIK, J.
DATE : 02nd JULY, 2018.

P.C.

1. The petitioner is aggrieved by the order dated 29th September, 2017 passed by the Sessions Court. The respondent had preferred revision application before the Sessions Court challenging the order of process passed by the learned Magistrate on 16th December, 2015. According to the respondent, there was a delay of 40 days in preferring the revision application. Learned Sessions Judge had condoned the said delay. The revision application is posted for hearing on merits before the Sessions Court on 17th July, 2018.

2. It is contended by the applicant that the Respondent No.1

had not shown sufficient cause to condone the delay. One of the ground which was raised for condonation of delay in relation to illness was not supported by any document. There was delay about 77 days. It is submitted that the revision application was filed on 2nd June, 2016 and not on 30th May, 2016. He relied upon the decision of this Court in *Chandrakant S/o Laxman Kulbhaiyya and another .Vs. State of Maharashtra*¹. It is submitted that the cause of delay was required to be explained and in absence of explanation the Court ought not to have condoned the delay. It is submitted that Court has to look into the merits of the case while condoning the delay. The plea was recorded in the complaint and in view of the decision of the Supreme Court, in the case of *Subramaniam Sethuraman -Vs- State of Maharashtra and another*², the revision was not maintainable. It is submitted that the Court committed an error in observing that revision was required to be filed in 90 days after receiving summons on 20.01.2016. Article 131 of Limitation Act is explicitly clearly that revision needs to be filed within 90 days from date of decree or order of sentence sought to be revived. The learned Sessions Judge has not taken

1. 323 Mah. Law Journal 2015(2)

2. AIR 2004 Supreme Court 4711

into consideration all these aspects and condoned the delay which is erroneous and deserves to be set aside.

3. It was contended by the respondents that respondent No.2 was suffering from ear infection and undergoing a ear surgery at Breach Candy Hospital whereas respondent No.1 being his brother was required to attend him during his hospitalization. Thereafter, they received the certificate copy and presented revision application. The applicant had opposed the condonation of delay by filing reply and contested the application for condonation of delay. It was contended by the applicant that revision applicant had raised a false grounds of illness and no reasonable ground is made out for condonation of delay. It was also submitted that the delay has to be calculated in accordance with Article 131 of the Limitation Act.

4. Taking into consideration, the submissions advanced by the parties and in the light of the observations made herein paragraphs 5, 6 and 7 of the impugned order dated 19th September, 2017, the delay was condoned. The learned Judge has observed that delay cannot be said to be unreasonably long. Each days delay is not required to be explained. Hyper technical approach is to be avoided in seeking proof for delay. It was

further observed that liberal approach is to be shown for condonation of delay.

5. The delay for preferring the revision application was condoned by the Sessions Court. I do not find any reason to take a different view of the matter. Indeed, while considering the issue of condonation of delay, the courts are not required to adopt a rigid and hyper technical approach. Parties should be given an opportunity to contest the proceedings on merits. The delay was not unreasonable. Opportunity is required to be given to the party to contest the proceedings on merits. The merits of the case will be dealt with while dealing with revision application. In the present case, the delay was not long and therefore there is no infirmity in the order passed by the Sessions Court.

6. The Writ Petition stands dismissed.

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Sachidanand
Kuttan Nair
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(PRAKASH D. NAIK, J.)