

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1153 OF 2018

Kailas s/o Laxman Patil
Age: 44 years, Occ-Service,
R/o- Pimpale Sim, tq.Dharangaon,
Dist. Jalgaon.

... **PETITIONER**

Versus

The State of Maharashtra
Through MIDC Police Station, Jalgaon,
Tq. & Dist. Jalgaon.

... **RESPONDENT**

...
Advocate for Petitioner : Mr. Sandesh R. Patil
A.P.P. for Respondent-State : Mr. B.V. Virdhe
...

CORAM : MANGESH S. PATIL, J.
DATE : 24.09.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-state. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is wife of the accused in Regular Criminal Case No. 538 of 2015 pending on the file of 2nd Joint J.M.F.C. Jalgaon for the offences punishable under Section 420, 465, 468, 471 read with Section 34 of the I.P.C. The charge was framed on 25.04.2017. He filed revision under Section 397 of

the Cr.PC. impugning the charge, however since there was a delay of 231 days in preferring the revision he filed application for condonation of delay. By the impugned order the learned Additional Sessions Judge refused to condone the delay. Hence this Writ Petition.

3. The learned advocate for the petitioner submits that there was sufficient cause which had prevented him from challenging the order directing framing of the charge. In fact, the petitioner had lost time as he was prosecuting a proceeding for quashment of the prosecution. He had filed Criminal Application No. 2335 of 2016 in this Court but it was rejected on 04.08.2017 *inter alia* on the ground that the charge was already framed. He had approached the Supreme Court and had filed Special Leave Petition (Cri.) Diary No. 2432 of 2018 but it was disposed of on 05.03.2018. Since he was prosecuting these remedies he lost precious time and could not file revision in time. If the delay is not condoned the petitioner would lose an opportunity to challenge the order directing framing of the charge. The learned Additional Sessions Judge has not considered these aspects in the proper perspective and has erred in refusing to condone the delay.

4. The learned A.P.P. submits that in fact the petitioner is circuitously seeking discharge. The order for framing the charge was passed on

25.04.2017 and before that he ought to have applied for discharge under Section 239 of the Cr.P.C. It was a warrant case instituted on a police report. Once the charge was framed, there is no question of any discharge. By preferring the revision the petitioner is trying to demonstrate that on facts of the case the charge ought not to have been framed against him. The learned A.P.P. would submit that it is only after he failed to get favourable order in a proceeding initiated by him for quashment that he has now started a second round by attempting to prefer the revision challenging the order which was already in existence when his Criminal Application No. 2335 of 2016 for quashment of the proceeding was pending before this Court. Therefore, it cannot be said that he was *bona fide* prosecuting a proceeding before different forum as contemplated under Section 14 of the Limitation Act. Considering all these aspects the learned Additional Sessions Judge has rightly rejected the application for condonation of delay. There is no apparent illegality or perversity. The Writ Petition may be dismissed.

5. I have carefully gone through the papers and the draft of the revision application. At the outset, it is important to note that the criminal proceeding pending before the Magistrate is a warrant case instituted on a police report and obviously the procedure laid down under Chapter XIX of the Cr.P.C. would be applicable. As can be seen, after compliance with Section

207 of the Cr.P.C., if upon considering the police report and the documents sent with Section 173, a Magistrate can discharge the accused if he finds the charge to be groundless by invoking the provision of Section 239. It is thereafter that the charge is to be framed in view of Section 240, a plea is recorded under Section 249 and thereafter the matter proceeds for recording of prosecution evidence under Section 242. It is thus apparent that once the charge is framed in a warrant case instituted on a police report there is no question of discharge. If such is the legal position, when admittedly the charge was framed on 25.04.2017, there was no question of discharge, enabling the petitioner to invoke Section 239 of the Cr.P.C.

6. Admittedly, the charge was framed while the petitioners Criminal Application No. 2335 of 2016 was pending before this Court for quashment of the entire proceeding. As is correctly noticed by the learned Additional Sessions Judge, this Court had not dismissed that proceeding merely on the ground that the charge was framed but independently after considering the merits as well. In fact, the petitioner had also filed Criminal Application No. 4066 of 2014 challenging the order for quashment. He had withdrawn that proceeding without seeking any liberty and filed Criminal Application No. 2335 of 2016 once again claiming same relief, as has been observed in the order passed by this Court in that proceeding on 04.08.2017.

7. Be that as it may, as has been correctly observed by the learned Additional Sessions Judge, considering the aforementioned history of the proceedings preferred by the petitioner, by no stretch of imagination can it be said that he was prosecuting the earlier remedies *bona fide* and has lost precious time in preferring the Writ Petition. He was duly represented by advocates right up to the Supreme Court and if that is so, the petitioner is not entitled to claim any benefit of Section 14 of the Limitation Act.

8. Once it is found that the petitioner is not entitled to claim any benefit of Section 14 of the Limitation Act, since the application preferred by him does not disclose any other reason which prevented him from preferring the revision in time. In the backdrop of all the aforementioned facts and circumstances, I find no apparent illegality in the impugned order refusing to condone the delay.

9. The Writ Petition is dismissed. The rule is discharged.

[MANGESH S. PATIL, J.]