

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.154 OF 2019

State of Goa,
through Police Inspector,
Verna Police Station, Verna.

.... Applicant

V/s

Shri Natividade Nazario Fernandes

.... Respondent

Shri S.R. Rivankar, Public Prosecutor for the Applicant.
Ms. H. Gopi holding for Shri G. Teles, Advocate for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 27th August, 2019

ORDER :

In an appeal filed by the State of Goa challenging the judgment and order dated 20/02/2018, passed by JMFC, Vasco Da Gama in Criminal Case No.58/S/2011/A, a delay of 156 days occurred and, therefore, its condonation is sought.

2. Heard Shri S.R. Rivankar, the learned Public Prosecutor for the applicant and Ms. H. Gopi holding for Shri G. Teles, the learned Counsel for the respondent.

3. It is submitted by Shri Rivankar that as per the opinion

given by the Director of Prosecution dated 16/04/2018, the impugned order passed by the Magistrate on 20/02/2018 was challenged before the Sessions Judge, Margao along with an application for condonation of delay. It was objected to by the respondent on 24/09/2018 as regard its maintainability before the said Court. Consequently, the prosecution moved an application for withdrawal of the appeal on 24/10/2018 with liberty to file the said appeal before this Court. The learned Sessions Judge on the same day permitted the prosecution to withdraw the appeal.

4. It is further submitted that the Public Prosecutor by letter dated 30/10/2018 referred the file to the Police Inspector, Verna Police Station for further processing the matter. The Superintendent of Police, South Goa, Margao thereafter sent the file to the Director of Prosecution seeking its opinion. The Director of Prosecution, in turn, forwarded the file to the office of Advocate General of the State. The learned Advocate General, thereafter, allotted the matter to the Public Prosecutor on 20/12/2018. As such, it is contended by the learned Prosecutor that the State was prosecuting its remedy with due diligence before a wrong forum, inadvertently, and, therefore, the

delay needs to be condoned.

5. On the other hand, it is submitted by Ms. H. Gopi that there is no sufficient cause shown for condonation of delay, as the prosecution is required to explain delay before each and every Officer which has gone unexplained. It is submitted that the respondent has accrued valuable rights in his favour on account of the acquittal granted by the Magistrate by the impugned order dated 20/02/2018 and, theretofore, that right cannot be taken away lightly.

6. I have considered the arguments of the respective Counsel at the bar. The learned Public Prosecutor has drawn my attention to Section 470 of Cr.P.C. provides for exclusion of time in certain cases. It reads thus:

470. Exclusion of time in certain cases -

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or

other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation – *In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.*

(4) In computing the period of limitation, the time during which the offender -

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

7. It appears that due to an incorrect opinion given by the

Director of Prosecution the State was prosecuting the remedy before a wrong forum. It was indeed with due diligence and bonafide as per Section 470 of Cr.P.C. and, hence, such period needs to be excluded while computing the period of limitation. Sufficient cause has been shown by the prosecution for condonation of delay, however, it cannot be lost sight of the fact that the respondent is put to some hardship due to the said delay which needs to be adequately compensated.

8. As such, the delay of 156 days stands condoned subject to costs of ₹3,000/- to be paid to the respondent. Payment of costs is a condition precedent for condonation of delay. After the payment of costs, the appeal shall be registered. The application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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