

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.212 OF 2019
IN
STAMP NUMBER MAIN NO.2755 OF 2019

The State of Goa,
Through Police Inspector,
Ponda Police Station, Ponda.

.... Applicant

V/s

Abdul Rasheed

.... Respondent

Shri M. Amonkar, Additional Public Prosecutor for the Applicant.
Shri Iftikhar Agha, Advocate for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date :- 13th November, 2019

ORDER :

A delay of 113 days has occurred in preferring the appeal by the State of Goa, who has impugned the judgment and order of acquittal passed by the learned JMFC on 03/01/2019 qua the respondent under Sections 279 and 338 of IPC.

2. Heard Shri Amonkar, the learned Additional Public Prosecutor for the applicant and Shri Agha, the learned Counsel for the respondent.

3. The respondent was acquitted on 03/01/2019 and the State had applied for a certified copy on the very next day i.e. on 04/01/2019. The copy was delivered to the applicant on 08/01/2019.

4. It is the contention of Shri Amonkar that after receipt of the certified copy of the impugned judgment and order, Assistant Public Prosecutor had given his opinion for preferring an appeal to the Superintendent of Police, South Goa, Margao. The Superintendent of Police after perusing the file forwarded the same to the Director of Prosecution on 27/03/2019. The Director of Prosecution, thereafter, on 29/03/2019 gave its opinion for preferring an appeal. The file was thereafter sent to law department for the final sanction and that is how the entire administrative process, which is quite long, resulted in the delay as above.

5. Shri Amonkar submits that the delay was not at all deliberate or intentional, but on account of the administrative reasons explained in the application. He submits that no prejudice would be caused to the respondent. However, if the delay is not condoned, there will be great injustice to the victim of the accident on account of rash and negligent

driving of the respondent.

6. Per contra, Shri Agha strongly objected the prayer of the applicant by submitting that there is absolutely no whisper in the application as to how much time the applicant took to give his opinion after receiving the file on 08/01/2019. It is also not explained by the State as to how much time the Superintendent of Police took to forward the file after it was received by him. There is not even a semblance of cause nor any other material on record to justify such a long delay, which is neither bona fide nor in good faith.

7. It is submitted that the application is filed in a most casual manner sans sufficient cause. Merely because the file came to be transferred from one department to another would not be a sufficient cause to condone the delay. The period of 90 days, according to Shri Agha, ended on 09/04/2019.

8. Having heard the learned Counsel at the bar and after going through the application and reply, I am of the view that the delay needs to be condoned for the reasons to follow.

9. The Hon'ble Supreme Court in case of *Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy & Ors.* reported in *2013 Law Suit (SC) 810*, has discussed the scope and laid down few guidelines or principles that can be considered while entertaining an application for condonation of delay. The Hon'ble Supreme Court has taken a survey of earlier pronouncements by it. It would be apposite to reiterate the principles which have been broadly culled out by the Supreme Court in paras 15 and 16 of its judgment, which read thus:

15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They

are: -

a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

10. Shri Agha, the learned Counsel has pressed into service a recent pronouncement of Madras High Court in case of ***State represented by the Public Prosecutor, High court, Madras V/s. State by the Inspector of Police, Vigilance and Anti Corruption, Chennai (CRL.MP No.7908/2019 in CRL.OP.SR No.26436/2019 & CRI.A. SR. No.26432/2019)***. The Madras High Court, in the aforesaid judgment, did refer to the ratio laid down by the Supreme Court in case of ***Esha Bhattacharjee*** (supra), more particularly, the salient features enumerated therein. However, it is to be noted that every case

is required to be viewed and analysed in the light of the peculiar facts and circumstances of that case as there cannot be a straight jacket formula for applying the broad principles enumerated by the Supreme Court in case of *Esha Bhattacharjee* (supra), as also in the pronouncement in the Supreme Court in case of *Postmaster General and Ors. V/s. Living Media India Limited & Anr.* reported in *2012 (3) SCC 563*.

11. Turning back to the case at hand, it would be difficult to construe that the applicant, who is the State, would intentionally cause delay, more particularly, when all the required procedure which had to be followed has been followed by the applicant, for, without following the said procedure there could not have been a proper course to prefer an appeal. It, therefore, cannot be said that there was a gross negligence or deliberate inaction or lack of bona fide on the part of the applicant. As has been observed by the Supreme Court in the aforesaid case, what is to be seen is the advancement of substantial justice and, therefore, the approach should be liberal, pragmatic, justice oriented and non-pedantic while dealing with an application for condonation of delay. Of course, substantial justice is of paramount

importance and the technical considerations should not be given undue emphasis. As has been observed by the Supreme Court in *Esha Bhattacharjee* (supra), that adherence to strict proof should not affect public justice and cause public mischief, because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice. Only because the State has not explained the day to day delay, that would not in itself be viewed otherwise to thwart the justifiable reason put forth by the State while seeking the condonation of delay.

12. No doubt, the instant application has not been drafted with precision and in a meticulous manner, but is haphazard in nature. Nevertheless, that itself should not be the reason to refuse relief sought for by the State. I am conscious of the fact that judicial discretion has to be exercised cautiously by not ignoring the fact that the respondent herein has indeed accrued some rights in his favour due to the delay. It is pertinent to note that the delay herein is neither inordinate nor unnecessarily long. Therefore, there would be no question of causing any prejudice to the respondent as the appeal can be adjudicated upon merits. However, the respondent can be adequately compensated

by saddling some costs on the State, so that, in future the State shall be more diligent in ensuring that appeals are filed within the prescribed period of limitation.

13. At this stage, Shri Agha, the learned Counsel for the respondent graciously submits that the amount of costs be credited with the Goa State Legal Services Authority. Such gesture on the part of the learned Counsel is appreciated.

14. The ratio of the judgment of the Madras High Court, thus can be viewed in the light of the aforesaid observations.

15. Upshot of the aforesaid discussion is that the State has shown sufficient cause to condone the delay and, therefore, the application needs to be granted.

16. The delay of 113 days stands condoned subject to payment of costs of ₹4,000/- to be deposited with the Goa State Legal Services Authority. The costs shall be deposited within two weeks. After depositing the costs, leave to appeal be registered.

17. The application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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