

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 368 OF 2018

State of Goa
Through Calangute Police Station ... Applicant

V e r s u s

Filipe Fernandes, ... Respondent

Mr. S. Rivankar, Public Prosecutor for the Applicant.

Respondent present in person.

**Coram :- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.**

Date : 10th October, 2019.

ORAL ORDER

1. This is an application for condonation of delay of 67 days in filing an appeal against acquittal.

2. The respondent was put on trial before the learned Children's Court in Special Case No.53/2016 for the offence punishable under Sections 302, 307 and 326 of Indian Penal Code, (IPC, for short) and for the offence under Section 2(m) (iii) read with Section 8(2) of the Goa Children's Act, 2003, (Act, for short) on the allegation that on 26.12.2015 at around 3.00 hours, the respondent committed murder of his two

minor children aged seven years and three years by strangulating them and made an attempt to cause death of his wife.

3. The learned Children's Court by a judgment and order dated 16.03.2018, has acquitted the respondent of the offence as charged. Feeling aggrieved, the State has filed a composite appeal/application for leave to appeal against acquittal in which there is a delay of 67 days.

4. According to the applicant, after the impugned judgment and order was passed on 16.03.2018, certified copy was applied for on 20.03.2018 and the same was delivered on 21.03.2018. After this, the opinion of the learned Public Prosecutor was sought who by his letter dated 29.03.2018 opined that there is a case made out for challenging the judgment. Subsequently, the legal opinion of the Director of Prosecution was sought which was received on 30.04.2018. The file was thereafter sent to the Chief Secretary on 02.05.2018 and was further sent to the AS (Home) who granted the necessary permission for filing the appeal. After the completion of the procedural formalities and the drafting of appeal, the same came to be filed on 24.08.2018, thus resulting into a delay of 67 days.

5. We have heard Mr. S. Rivankar, the learned Public Prosecutor for the applicant and the respondent who appears in person.

6. Mr. Rivankar, the learned Public Prosecutor for the applicant has submitted that immediate steps were taken to challenge the impugned judgment and order and some time was consumed in obtaining the necessary opinion/approvals and the delay is unintentional.

7. The respondent who appears in person submitted that the application does not set out the provision of law under which it is filed. Secondly, it is submitted that the record about the movement of the file pertaining to obtaining of the opinion and approvals is not produced and, therefore, the applicant has not made out sufficient cause for condonation of delay. It is submitted that the respondent has been acquitted by the learned Children's Court and he cannot be made to face the appeal after condonation of delay on allegations which are vague and which are not substantiated.

8. We have carefully considered the circumstances and the submissions made. The Supreme Court in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur**

Nafar Academy & Ors. (2013) 12 SCC 649, after taking a survey of several decisions, holding the field has culled out the principles which are germane, while considering a prayer for condonation of delay. The principles have been set out in paras 21 and 22 of the judgment. It has been, inter alia, held that there is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. It has been further held that a case of inordinate delay warrants strict approach whereas the latter calls for a liberal delineation. As per para 21(xiii), it has been held that State or a public body or an entity representing a collective cause should be given some acceptable latitude. We find that both these principles are squarely attracted in this case. The delay cannot be said to be gross and the prayer for condonation can be considered liberally. The applicant does not stand to gain by approaching the Court late.

9. The Court has to take a pragmatic and a justice oriented view of the matter, while considering the prayer for condonation. We also find that mere absence of the provision under which the application for condonation is filed, is not decisive. Considering the over all circumstances, we find that

the applicant has established sufficient cause for condonation of delay.

10. In the result, the Criminal Application is allowed. The delay is hereby condoned. Let the appeal be listed for admission.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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