

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.1131 OF 2017

(Dr. Ajit s/o Dalsing Sirsat Vs. Anil Babanrao Arakh and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri K.P. Sadavarte, Advocate for Appellant.
Shri R.G. Kavimandan, Advocate for Respondent 1.

CORAM: ROHIT B. DEO, J.

DATE: 25th JUNE, 2019.

Heard.

2] This is an application for condonation of delay in filing appeal under Section 378(4) of Code of Criminal Procedure.

3] The applicant is the complainant in Summary Criminal Case 230 of 2005. The complaint was dismissed in default and thereafter restored. By order dated 16.09.2017 the Additional Sessions Judge, Buldhana allowed Criminal Revision 91 of 2015 and set aside the order of restoration. It is under these circumstances, that the complainant is required to challenge both the orders that is the first order of the learned Magistrate and the order of the Revisional Court. Shri R.G. Kavimandan, the learned counsel for the respondent 1 would submit that the order in revision cannot be assailed in appeal. The submission is not without substance.

4] However, the learned counsel for the applicant Shri K.P. Sadavarte submits that the order of dismissal of the criminal complaint under Section 256(1) of the Cr.P.C. is appealable. The submission is, that the applicant would restrict the challenge to the order of the learned Magistrate of dismissing the complaint in exercise of power under Section 256(1) of the Cr.P.C.

5] The justification pleaded for delay in preferring appeal is thus:

2(a) As soon as the applicant got knowledge about the order, the applicant applied for certified copies of the same, and hand sent the copy of the order to the Counsel at Nagpur, wherein the appeal was drafted by the Counsel and was sent back to this applicant for solemn affirmation so that it could be filed within reasonable time. After which immediately on receiving papers from Nagpur the special leave to appeal was solemnly affirmed by the applicant before Superintendent of Buldana on 2.11.17.

2(b) On affirmation of the Special Leave to Appeal, the mother of the applicant had went seriously ill for which she was admitted in the Mehetre Hospital and Criminal Care Centre, and she was under constant observation as the condition of the mother was not good as she was suffering from Bilateral Pneumonic With Old Ca Breast, and even after discharge she was informed to take bed rest, Documents pertaining to the medical illness are collectively annexed herewith at Annexure A-1. Also additionally the applicant is a pathologist by

profession, so because of the reason stated above the applicant forgot to contact his counsel and get the appeal registered within the time prescribed by Law.

6] According to the applicant, the delay is of 53 days. However, Shri Kavimandan submits that the delay is of 758 days. The difference in calculation arises since according to Shri Sadavarte the cause of action for preferring the appeal arose when the learned Magistrate dismissed the complaint vide order dated 01.10.2015. The submission ignores the fact that the order of dismissal was set aside by the learned Magistrate and the complaint was restored. It was only when the revision was allowed vide order dated 06.09.2017 that the applicant had an occasion to have a grievance as regards the dismissal of the complaint. In any event, even if it is assumed *arguendo*, that Shri Kavimandan's hyper technical submission has any substance, the fact of the matter is that the applicant had no occasion or reason to challenge the order of the learned Magistrate of dismissing the complaint till the Revisional Court set aside the order of restoration. In any view of the matter, the delay, whether the delay is of 53 days as is contended by the applicant or the delay is of 758 days as is argued by Shri Kavimandan, deserves to be condoned in view of the justification pleaded.

7] The application is allowed.

Criminal Application (APPA) No. ____/2019:

The original complainant Dr. Ajit Sirsat is seeking leave to appeal to challenge the judgment of acquittal.

2] The learned Magistrate dismissed the complaint vide order dated 01.10.2015, in exercise of power under Section 256 of the Cr.P.C. The learned Magistrate records that although the affidavit in lieu of examination-in-chief is filed in 2013, the complainant has not stepped into the witness box till date. It is further observed that the complainant has sought adjournment on one pretext or the other. It is noted that in both the sessions that is morning and the afternoon session neither the complainant nor his counsel was present nor is an application for adjournment filed.

3] I have scrutinized the memo of appeal minutely since at first blush it appears that there is no ground raised in the memo of appeal to assail the order of dismissal. The learned counsel for the appellant is also not in a position to point out a single averment in the memo of appeal which assails the order of dismissal much less questions the correctness of the observations made therein. The order-sheet is not placed on record. It is not even the case of the appellant that the observation in the order impugned is factually incorrect.

4] In this view of the matter, there is no case made

out for grant of leave to appeal.

5] The application is dismissed.

JUDGE

NSN