

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.661 OF 2015

**RAJESH MADHUSUDAN SANGANI ... PETITIONERS.
AND ANOTHER**

VERSUS

THE STATE OF MAHARASHTRA ... RESPONDENTS.

Mr.K.M. Sangani, Advocate for the Petitioners.

Mr.S.V.Gavand, Additional Public Prosecutor, for the State.

CORAM : A. M. BADAR, J.

DATE : 21ST FEBRUARY 2020.

P.C.:

1. Heard learned counsel appearing for the petitioner at sufficient length of time. He took me through the impugned Order dated 16.8.2014 passed by the learned Additional Sessions Judge, Greater Bombay and argued that the Charge was framed without hearing the

petitioners/accused. In submission of the learned counsel for the petitioners, the petitioners/original accused were not aware about framing of the Charge and therefore, there was no delay for preferring the revision petition challenging framing of Charge. Learned counsel further submitted that the petitioners had applied for transfer of case from the file of the learned Metropolitan Magistrate and while hearing that application, the learned Metropolitan Magistrate had reported that there was no hearing while framing of Charge. With this, it is argued that delay of about 100 days ought to have been condoned by the learned Additional Sessions Judge and the revision petition ought to have been decided on merits.

2. Learned Additional Public Prosecutor opposed the petition by contending that the impugned order passed by the learned Additional Sessions Judge is perfectly legal and after framing and explaining the Charge, plea is required to be recorded by putting several questions. Learned Additional

Public Prosecutor argued that the learned trial Magistrate had put those questions and those questions were answered by the petitioners/accused. Therefore, they can not be heard to say that they were not aware about framing of the Charge.

3. I have considered the submissions so advanced and also the material placed on record.

4. Petitioners are the original accused. They are sought to be prosecuted for the offences punishable under Section 465, 467, 471 and 420 of the Indian Penal Code after filing of the Chargesheet and consequent registration of Criminal Case No.121/P/2002. The prosecution is at the instance of the State. Allegations are to the effect that the accused persons have forged the documents such as income certificate, employment certificate, reference letters and relying on such forged documents, they committed an offences alleged against them. It is averred that they had

cheated the State Government in the matter of allotment of an apartment from the Government quota.

5. The record shows that, as the petitioners/accused were not attending the trial of the subject criminal case, warrants came to be issued against them. Petitioners/original accused then attended the Court of learned Metropolitan Magistrate on 10.01.2014 and applied for cancellation of warrants. Thereafter, on 10.01.2014 itself, Charge came to be framed against the petitioners/accused. The record further shows that then plea of the petitioners/accused came to be recorded. They pleaded not guilty and claimed trial.

6. The record further shows that then the criminal case was adjourned to 04/03/2014 and 5/05/2014. Then both the petitioners preferred a revision petition challenging the Charge by contending that without hearing them, the

learned trial Magistrate has framed the Charge. As the revision petition was filed beyond limitation, application for condonation of delay, in preferring revision petition, came to be filed. That application came to be registered as Miscellaneous Application No.2242 of 2014. The revisional court was pleased to reject this application by the impugned order.

7. It is well settled that the revisional jurisdiction is exercised sparingly when there is manifest error on the point of law or when there is glaring defect of procedure resulting in miscarriage of justice. On these principles, the impugned order rejecting application for condonation of delay is required to be examined.

8. The revisional court after examining the record of the criminal case has observed that both the petitioners are well versed with English language. They had signed the

plea in English language. They answered the questions regarding the Charge explained to them in affirmative but they replied in negative to the question asking them whether they plead guilty. With these observations borne from the record, the revisional court concluded that both the petitioners were very well aware of the fact that Charge against them came to be framed on 10.01.2014. It is further noted by the revisional Court after examining the record the subject criminal case was adjourned to 4/3/2014 and 5/5/2014. With this it is observed by the revisional court that the petitioners were well aware as to what happened in the matter on 10.1.2014 itself and they had not dared to challenge framing of Charge even upto 25/06/2014. With these observations, the learned revisional court gave finding that the reasons put forth by the petitioners for condoning delay does not amount to sufficient cause.

9. The only reason pressed in service for seeking

condonation of delay is to the effect that the petitioners were unaware about framing of Charge. The record shows that the Charge was explained to them on 10.01.2014 by recording their pleas which they signed in English language. The impugned order passed by the revisional court shows that, the revisional court was well aware of law that liberal approach is required to be shown while condoning delay. But it had held that sufficiency of cause is required to be kept in mind.

10. In the case in hand, when the petitioners were aware about framing of Charge against them on 10.01.2014 itself, they can not be heard to say that they were not aware of the same upto 25.06.2014. The reasons so stated by the petitioners can not amount to sufficient cause. No infirmity, as such, can be found in the impugned order of the learned revisional court in rejecting the application for condonation of delay. Consequently, in this petition wherein principle challenged is regarding impugned order of rejection of

application of condonation of delay, ancillary reliefs can not be granted. Petition as such being devoid of merits, stands dismissed.

(A. M. BADAR, J.)