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IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Writ Petition NO.57 of 2020

CARLOS TAVORA AND 2
ORS.,

PETITIONERS

Versus

STATE, REP. BY, PRITESH NAIK AND
ANR.

RESPONDENTS

Mr. Vijay A. Palekar, Advocate for the Petitioners

**Mr. G. Nagvenkar, Additional Public Prosecutor for the
Respondent-State**

CORAM: MANISH PITALE, J

DATED: 7th October, 2021

Oral Order:

1. By this Writ petition, the petitioners have challenged order dated 10/12/2018, passed by the Court of Sessions Judge, South Goa, whereby an application for condonation of delay in filing revision application, filed by the petitioners was rejected and the proceedings were closed. The Court below was of the opinion that no sufficient cause was disclosed for condoning the delay.

2. Although the impugned order records that there was a delay of 145 days in filing the revision application, the learned counsel appearing for the petitioners submits that there was a calculation

mistake and that actual delay comes to 68 days. It is fairly submitted that the petitioners had wrongly claimed before the Court below that there was a delay of only 36 days. A list of dates and events was handed over to demonstrate before this Court that the period of delay could at the maximum be 68 days. In calculating the said period, the petitioner has proceeded on the basis that the date of service of summons was the very date on which the summons were issued i.e. on 18/1/2018. The learned Additional Public Prosecutor appearing on behalf of the respondent-State could not seriously disputed the list of dates and events handed over by the learned counsel appearing for the petitioner. Hence, this Court is proceeding on the basis that there is a delay of 68 days in filing the revision application.

3. While the learned counsel appearing for the petitioners submits that the reasoning adopted by the Court below was not justified, the learned Additional Public Prosecutor submitted that a perusal of the roznama would show that the petitioners were served with summons, yet, they chose not to challenge the said order within limitation before the Sessions Court.

4. This Court has perused the impugned order. Apart from the fact that the Court below proceeded on the basis that there was delay of 145 days, it appears that the reasoning of the Court was that the petitioners were not justified in seeking to explain the delay by relying upon another proceeding initiated on their behalf under section 258 of the Code of Criminal Procedure (Cr.P.C) for stopping the proceedings before the Magistrate. It is found in the impugned order that the petitioners were negligent

in pursuing their remedy and that therefore, no sufficient cause was disclosed for condonation of delay.

5. This Court has perused the roznama of the proceedings before the Magistrate. It is evident from the same that the petitioners indeed appeared before the Magistrate on 31/1/2018 and they filed application under section 258 of the Cr.P.C. on 6/2/2018, for stopping the proceeding before the Magistrate. The respondent filed reply on 2/7/2018 in the said application, pointing out that the application was not maintainable for the reason that the proceedings were initiated on the basis of a complaint. At this stage, the petitioners were advised to file revision application to challenge the order passed by the Magistrate issuing summons against them. The roznama shows that eventually the application filed under Section 258 of the Cr.P.C. for stoppage of the proceeding was withdrawn on 1/10/2018.

6. On perusing the material on record this Court finds that the petitioners were initially advised to file the aforesaid application under section 258 of the Cr.P.C. for stopping of the proceeding and when it was realised on the reply filed by the respondent-State that the application was not maintainable, within three days, they filed the Revision application before the Sessions Court. The total delay in the present case, even if was to be taken that the petitioners were served with summons on 18/1/2018, comes to 68 days. In the facts and circumstances of the present case, it cannot be said that the petitioners were negligent in pursuing their remedy of filing the revision application. The petitioners perhaps proceeded on the basis of

advice given to them to initially file the application under section 258 of Cr.P.C. The petitioners had nothing to gain by pursuing a wrong remedy. When they realised that the proper remedy was to file revision application, the petitioners indeed made efforts to file the same immediately on 5/7/2020.

7. In the facts and circumstances of the present case, this Court is of the opinion that sufficient cause was disclosed on behalf of the petitioners to explain the delay, which the Sessions Court failed to appreciate while passing the impugned order. In view of the above, the Writ Petition is allowed. The impugned order dated 10/12/2018, is quashed and set aside. Delay in filing the revision application is condoned. Accordingly, the Sessions Court is directed to take up the revision application of the petitioners and to proceed further in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the matter.

MANISH PITALE, J.

MARIA
AURA
PEREIRA

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