

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 108 OF 2019

1. Benedito D'Souza, Rep. Thr. His POA, ...Petitioner
Dinesh D'Souza

Versus

1. The Goa State Commission for Women, Thr.
Its Member Secretary & anr. ...Respondents

**Mr. Raunak A. Katak and Mr. A. R. Katak, Advocates for
the Petitioners.**

**Mr. Arun Bras De Sa and Mr. Sahil Sardessai, Advocates for
the Respondent no. 2.**

CORAM: MANISH PITALE, J

DATED: 15th September 2021

ORAL ORDER

1. By this Writ Petition, the Petitioner has challenged order dated 23.07.2018 passed by the Sessions Court, South Goa, at Margao, whereby an application for condonation of delay of 930 days in filing a Criminal Revision Application, has been rejected.

2. According to the Applicant, the Sessions Court erred in holding that sufficient cause for condonation of delay was not made out.

3. In the present case, a Criminal Proceeding was launched against the Respondents at the behest of the Petitioner in the year 2006. Offences under Sections 323 and 506(II) of the Indian Penal Code (IPC) were alleged against the Respondents. They

filed an application for discharge, which was allowed in their favour on 23.08.2014.

4. The Petitioner filed an appeal challenging the said order, whereby the Respondents stood discharged. But, it was later realised that an appeal did not lie before the Sessions Court against the order of discharge and, accordingly, an application was moved on behalf of the Petitioner on 14.08.2015 seeking permission to withdraw the appeal. It was stated in the application that there was a misunderstanding of law and that the Petitioner intended to approach this Court to challenge the order of discharge passed in favour of the Respondents. Accordingly, on 14.08.2015, the appeal was disposed of as withdrawn.

5. It is the case of the Petitioner that because of ill health of his wife, he could not pursue the matter in right earnest and that eventually his wife expired on 07.07.2016. The Petitioner claims that he himself being a senior citizen was suffering from various ailments and it was only in the year 2018 that he received proper advice to the effect that the order of discharge could not be challenged before this Court, but a revision application was required to be filed before the Sessions Court. Such a revision application was eventually filed on 15.03.2018, before the Sessions Court along with an application for condonation of delay of 930 days.

6. The Sessions Court considered the application for condonation of delay filed on behalf of the Petitioner. After taking into consideration the reasons put forth on behalf of the Petitioner, the Sessions Court found that sufficient cause was not

made out and that the Petitioner himself was negligent and inactive, thereby demonstrating that the application for condonation of delay could not be allowed.

7. Mr. Kantak, the learned Counsel appearing for the Petitioner, has reiterated the reasons stated before the Sessions Court. Attention of this Court has been invited to the documents showing the medical condition of the wife of the Petitioner and the fact that eventually she expired on 07.07.2016. The learned Counsel for the Petitioner also referred to a medical certificate dated 20.02.2018, certifying that the Petitioner being 84 years of age, was receiving treatment for various ailments including asthma, arthritis and depression. It was submitted that the said factors and particularly because of the wrong advice given by the Advocate, the delay of 930 days had occurred in approaching the Sessions Court for revision. He submitted that the Petitioner was a senior citizen who deserved one chance before the Sessions Court to air his grievances on merits. The learned Counsel has relied upon the judgment of this Court in the case of *Pratapchand Lakhamaji Jain vs. Smt. Lilabai Krishanath Surve*¹.

8. On the other hand, Mr. Arun Bras De Sa, the learned Counsel appearing for the Respondents, brought to the notice of this Court that there was a reference to a Power of Attorney executed by the Petitioner in favour of his own son whose address was the same as that of the Petitioner. It was submitted that a crucial fact was suppressed by the Petitioner from the Court that such Power of Attorney was executed in favour of the son in

¹ 1991(1) Bom.C.R. 27

pursuance of which Second Appeal had been filed before this Court with regard to a civil dispute between the same parties as far back in the year 2012. Attention of this Court was invited to certain orders passed by this Court in a Civil Application filed in the Second Appeal, showing that the Petitioner was represented through his own son as the Power of Attorney holder. It was further submitted that the Sessions Court had correctly appreciated the material on record to reject the application for condonation of delay.

9. This Court has also perused the impugned order and the documents placed on record, as also the Judgment on which the learned Counsel appearing for the Petitioner has placed reliance.

10. Insofar as the contention regarding mistake of Advocate is concerned, the material on record shows that the aforesaid reason for delay in filing the revision application can be said to be relevant for the period between 28.03.2014 and 14.08.2015, because the appeal wrongly filed before the Sessions Court was withdrawn on 14.08.2015. Thereafter, till the revision application was eventually filed on 15.03.2018, the reasons pertaining to the mistake of Advocate cannot be applicable. For the aforesaid period, the only reasons stated on behalf of the Petitioner are the ill health of his wife, her death, as also the ill health of the Petitioner himself. This Court is of the opinion that the said reasons put forth on behalf of the Petitioner are not convincing. The medical condition of the Petitioner indicates that he suffered from ailments that could be found in senior citizens and that if he was alive to his urge to air his grievance against the order discharging the Respondents, he would have

moved diligently before the Sessions Court in revision. There are no details regarding advise taken from the Advocate who eventually filed the revision application, as to when such advise was taken and what prevented the Petitioner from moving the appropriate Court in an appropriate proceeding after the appeal was withdrawn on 14.08.2015. The impression gathered on the basis of the record is that the Petitioner himself was not diligent in seeking an appropriate remedy against the order of discharge passed in favour of the Respondents.

11. Apart from this, it is evident from the material brought to the notice of this Court that the Petitioner himself had executed a Power of Attorney in favour of his own son prior to the year 2012, on the basis of which certain proceedings were initiated before this Court on behalf of the Petitioner through the said Power of Attorney. This clearly indicates that the reasons put forth on behalf of the Petitioner on his health grounds and those of his wife, cannot be said to be bona-fide.

12. Insofar as the Judgment on which the learned Counsel for the Petitioner has placed reliance, it is noted in paragraph 7 thereof that there cannot be a universal proposition as regards wrong advise given by an Advocate being a ground for condonation of delay and that each case would have to be decided on its own merits. This Court, on the basis of the record of the present case, has come to the conclusion that the ground of mistake of the Advocate of the Petitioner was a reason for condonation of delay only upto the year 2015 and the same could not be pressed into service for condonation of delay from August

2015 till March 2018. Therefore, the ratio of the judgment is not applicable to the facts of the present case.

13. In view of the above, this Court finds that there is no merit in this Writ Petition. Accordingly, the Writ Petition is dismissed. Pending applications, if any, stand disposed of.

MANISH PITALE, J.

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