

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1649 OF 2015

Nishigandha Ramesh Chavan and anr.Petitioners
Vs.
Ramesh Bhupal Chavan and anr. Respondents

Mr.Ajit Savagave, for the Petitioners.
Mr.Rahul Sudhakar Kulkarni, for Respondent No.1.
Mr.N.B. Patil, AGP for the Respondent No.2 - State.

CORAM : M. S. KARNIK, J.

DATE : 01st MARCH, 2021

P.C. :

. Heard learned Counsel for the Petitioners. The Petitioner's daughter and wife of Respondent No.1 had filed criminal proceedings under section 125 of the Code of Criminal Procedure, 1973 (for short CrPC) for maintenance before the Judicial Magistrate, First Class, Jaisingpur (for short 'JMFC'). On 14/10/2011, the matter was dismissed for want of prosecution by learned JMFC. An application was filed by the Petitioners for restoration. As there was delay of 30 days in filing the application, application for condonation of delay was made.

2. Learned JMFC was of the opinion that the delay of 30

days has not been properly explained. The application for condonation of delay therefore came to be rejected by JMFC on 06/09/2013.

3. The Petitioners therefore filed criminal Revision before learned Sessions Judge, Jaisingpur. By the impugned order dated 20/09/2014, Revision came to be dismissed.

4. Learned Counsel for the Petitioners submitted that the delay was satisfactorily explained. He relied upon the decision of the Hon'ble Supreme Court in the case of **Sanjeev Kapoor Vs. Chandana Kapoor and ors.** in Criminal Appeal No. 286 of 2020 (arising out of SLP [Criminal] No. 1041 of 2020 decided on 19/02/2020).

5. Both the Courts were of the opinion that the Petitioners have not explained the delay of 30 days satisfactorily. The reason put forth by the Petitioners was that mother of Petitioner No.2 was not keeping well and her medical condition had to be looked after. Both the Courts below were of the opinion that there is no proof submitted by the Petitioners in support of the explanation that the mother of the Petitioner No.2

was not keeping well.

6. It is the contention of learned Counsel for Respondent No.1 that application for restoration before learned JMFC is not maintainable. He further contended that the explanation for the delay is not supported by any evidence or documentary proof. According to him there is no warrant to interfere with the reasoned order passed by the Courts below.

7. In support of his submissions, learned Counsel for Respondent No.1 relied upon the decision of the Apex Court in the case of **Bindeshwari Prasad Singh Vs. Kali Singh (1977) 1 Supreme Court Cases 57**. He also relied upon the decision of the Andhra Pradesh High Court in the case of **C.Subramanyam Vs. C.Sumathi 2004 (1) ALT (Cri) 341**.

8. In my opinion, the impugned orders call for interference. The delay was of 30 days in making the application for restoration. The Trial Court as well as Revisional Court was of the opinion that the conduct of the Petitioners in prosecuting the proceedings has not been satisfactory apart from unsatisfactory explanation offered by the Petitioners to condone the 30 days

delay. According to me, the Courts below have adopted a very hyper-technical approach. The delay was of 30 days in filing the application for restoration. The Petitioners stated in the application that the mother of Petitioner No.2 was not keeping well. It needs to be borne in mind that Petitioner No.1 - daughter and Petitioner No.2 - wife of Respondent No.1 were prosecuting the application for maintenance under section 125 of CrPC against Respondent No.1. If at all the Courts below were of the opinion that the Petitioners have not been diligent in prosecuting the proceedings, it was always open for the Courts below to have put the Petitioners to strict terms instead of rejecting the application for restoration. However, the fact that Petitioners have not been diligent in prosecuting the proceedings could not have been one of the reason for rejecting the application considering that the delay in filing the restoration application was only 30 days and the explanation deserved to be accepted in the interest of justice.

9. In any case, in my opinion, the order passed by the Magistrate dismissing the criminal proceedings for non prosecution even otherwise deserves to be set aside. The Petitioners have stated that the mother of Petitioner No.2 was not keeping well. Considering the explanation offered by the

Petitioners, the impugned order passed by the JMFC as well as the order passed in Revision deserve to be quashed and set aside and accordingly, set aside. The Petition is allowed in terms of prayer clause (A).

10. The JMFC to proceed with the Criminal Misc. Application No. 117 of 2006 on its own merits and in accordance with law.

11. Writ Petition is disposed of.

(M.S.KARNIK, J.)