

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

**CRIMINAL REVISION NO.74/2018**

Sau. Archana Pradip Ghevande,  
Aged about 44 years, Occ. Advocate,  
r/o Adarsha Colony, Deulgaon Raja,  
Tq. Deulgaon Raja, Dist. Buldhana.

**....APPLICANT**

**...VERSUS...**

1. The State of Maharashtra through  
Police Station Officer, P.S. Deulgaon  
Dist. Buldana.

2. Varsha Govind Kankal,  
aged 39 years, Occ. Advocate,  
r/o Fukatpura, Sindkhed Raja,  
Tq. Sindkhed Raja, Dist. Buldhana.

**...NON APPLICANTS**

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Mr. S. V. Sirpurkar, Advocate for applicant.  
Mrs. M. A. Barabdhe, A.P.P. for non applicant no.1.  
Ms S. Khobragade, Advocate for non applicant no.2.  
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**CORAM:- V. M. DESHPANDE, J.**  
**DATE :- 12.01.2021**

**ORAL JUDGMENT**

1. Rule. Rule is made returnable forthwith. Heard finally  
by consent of learned counsel for the parties.

2. Heard Mr. Sirpurkar, learned counsel for applicant,  
Mrs. Barabdhe, learned A.P.P. for non applicant no.1-State and Ms  
Khobragade, learned counsel for non applicant no.2.

3. By filing this application, applicant is challenging judgment and order passed in Criminal Revision No.82/2017 passed by learned Additional Sessions Judge, Buldana on 20.02.2018 whereby learned Additional Sessions Judge quashed and set aside the order passed by learned Judicial Magistrate First Class, Deulgaon Raja in Misc. Criminal Application No.98/2017 and remanded the matter back to the trial Court for deciding the point of issuance of process, afresh.

Learned counsel for applicant heavily relied on decision of Hon'ble Apex Court in *Assistant Collector of Customers and anr. Vs. U.L.R. Malwani and anr.* reported in *AIR 1970 SC 962*, particularly paragraph 9 of the said judgment.

4. The applicant herein filed private complaint against non applicant no.2 in the Court of learned Judicial Magistrate First Class, Deulgaon Raja. After recording verification and also recording evidence of two witnesses, learned Judicial Magistrate First Class, Deulgaon Raja, on 09.10.2017 issued process against non applicant no.2 for an offence punishable under Sections 294, 323, 506 of the Indian Penal Code.

5. Non applicant no.2, being aggrieved by the said, approached to the revisional Court by filing Criminal Revision No. 82/2017. The learned revisional Court partly allowed the revision inasmuch as order of process was quashed and learned revisional Court directed learned Magistrate to hear the original complainant on the point of delay after quashing the process issued against non applicant no.2.

6. The incident in question is dated 05.10.2016. It is pertinent to note that complainant as well as accused both are advocates and practice at Deulgaon Raja. The complaint case is in respect of the incident dated 05.10.2016 and complaint was filed by the complainant on 27.06.2017. Thus, there is a delay of 8 months. It is a cardinal principle of law that delay cannot be fatal. However, it is duty of complainant to explain delay satisfactorily.

7. Since it is a private complaint, at the threshold, it was expected on the part of the complainant to explain the delay and the learned Judge of the trial Court before issuance of the process was expected to deal with the said aspect. Perusal of the order passed by learned Magistrate issuing process clearly shows that

the learned Magistrate has not touched and/or considered the issue in respect of filing of the complaint belatedly.

8. Learned revisional Court, in my view, has not committed any error in remanding matter in the Court of learned Magistrate in order to give an opportunity to the complainant to explain the delay. It shall be open for learned Magistrate either to accept or reject the explanation offered by the complainant. While considering the said aspect, it will be open for the complainant to adduce the necessary evidence.

9. In view of the aforesaid, I am of the view that no interference is required in the order passed by the revisional Court. The revision is, therefore, rejected.

Rule is discharged.

**JUDGE**

kahale