

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

956 CRIMINAL WRIT PETITION NO.1090 OF 2022

Dhondiram S/o. Sayaji Bhise,
Age-57 years, Occu-Business,
R/o. Near Bahirodba School,
Bramhani, Tq. Rahuri,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through DGP Office, Ahmednagar
Tq. & Dist. Ahmednagar

...RESPONDENTS

2. Bhaguji S/o. Tulshiram Virkar,
Age-41 years, Occu- Agri,
R/o. Dhangarwadi, Sonai,
Tq. Newasa, Dist. Ahmednagar

Mr. Amol K. Gawali, Advocate for the petitioner
Mr. A. S. Gandhi, Advocate for respondent No.2
Mr. P. N. Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 14th DECEMBER, 2022

JUDGMENT

1. Heard the learned advocates for the parties.
2. Rule.

3. Rule is made returnable forthwith with the consent of the parties.

4. By way of this writ petition the petitioner is challenging the order dated 01-12-2021 passed by the learned Additional Sessions Judge, Ahmednagar dismissing Criminal Misc. Application (Delay) No.152/2019. The application was filed seeking condonation of delay that was caused in filing the revision application against the order passed by the learned JMFC accepting report under 169 of the Code of Criminal Procedure. The order was passed by the learned JMFC, Rahuri on 11-04-2019. The petitioner thereafter had filed a criminal writ petition No.949/2019. This court by order dated 02-08-2019 was pleased to observe that the order accepting summary report is revisable order and for that reason this court did not grant any relief and the petition was disposed off as dismissed. This court, however, granted liberty to approach the Sessions Court. It is, thereafter, the petitioner approached the learned

Sessions court by filing an application on 17-09-2019. Learned Additional Sessions Judge in para 10 of the order observed that the period of delay is wrongly calculated and it is wrongly stated to be only 23 days. It is observed that there is no explanation given for the delay from the date of impugned order passed by the learned JMFC. The court also considered the matter on merits by observing that when the notice was given after of receiving of the report under Section 169 this petitioner has refused to accept the notice. The petitioner, therefore, cannot say the opportunity of hearing was not given before accepting the report under Section 169 etc. In para 11 it is observed that in fact the delay is of 69 days in filing the criminal revision excluding the period of limitation, but it is wrongly mentioned as 23 days and without pointing any sufficient reasons has rejected the application. The learned advocate submits that in fact the court should have adopted a liberal approach while considering the application for condonation of delay. There was no intention to cause delay. But the delay is mainly caused because of petitioner had approached this court by filing writ

petition. When the petition was dismissed, this court had granted liberty to approach the learned Sessions Court. Considering from the date of order in writ petition 02-08-2019 the petitioner has approached within reasonable time and this factor is not considered by the learned revisional court. He submits that impugned order deserves to be quashed and set aside and delay deserves to be condoned.

5. Learned advocate for the respondents submitted that it was necessary for the petitioner to explain the delay that was caused even till filing of the writ petition. He submitted that even the writ petition was filed after 8 to 9 months. Even after dismissal of the writ petition, he did not immediately approach the revisional court. This shows that he is not diligent in availing remedies. Now entertaining the petition would only result in unnecessary harassment to respondent No.2. In his favour the Police have also submitted report under section 169. He submits that it is only an attempt to protract the litigation and to cause harassment. He relied upon the judgment reported in *1998 AIR*

(SCW) 3139 in the case of N. Balakrishnan Vs M. Krishnamurthy. It was a case of setting aside of ex-parte decree under order 9 rule 13. In that judgment also it is clearly held that condonation of delay is a matter of discretion of the court. In paragraph No. 13 of the said judgment it is observed that it must be remembered that in every case of delay, there can be some lapses on the part of the litigant concerned. However, that alone is not enough to turn down his plea and to shut the door against him etc. Further he relied upon the judgment of this court reported in *2000 ALL MR (Cri) 100 in the case of Dinkar Vitthal Padalkar Vs Secretary of Shri Chalakeshwar and ors*, wherein it is held that the delay cannot be condoned merely for asking. The party must give satisfactory reason for condoning the delay in absence of which the court is not bound to condone the delay. Thus, he submits that applying the ratio of this judgment, it was necessary and since the petitioner had not offered sufficient explanation for delay, the petition failed.

6. Considering the submission and the judgments relied

upon by the petitioner this court finds that while considering the question of condonation of delay court has to see the conduct of the parties. When the conduct shows that there is reasonable attempt on the part of the litigant to prosecute the litigation, the court need not adopt technical approach. Asking the petitioner or the litigant to offer explanation for delay in specific details is not necessary. It is sufficient to see that parties has acted reasonable. In this case, it is seen that the petitioner had approached this court by filing a writ petition while dismissing the writ petition, this court had granted him liberty to approach the Sessions Court in revision. Looking for the period and the period after passing of the order in this writ petition, this court finds that the delay was not deliberate and is properly explained. In view of this, the writ petition deserves to be allowed. The judgment and order passed by the learned Sessions Judge dated 01-12-2021 in Criminal M. A. (delay) No. 152/12019 is set aside. Said application stands allowed. Rule is made absolute in above terms.

[KISHORE C. SANT, J.]