

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

CRIMINAL WRIT PETITION NO. 2018 OF 2022

M-s. Tulsiwadi Navnirman Co Operative
Housing Society Ltd., And Ors. ...Petitioners
Versus
State Of Maharashtra And Anr. ...Respondents

....

Mr. Fauzan i/b Mr. R. B. Mokashi, Advocate for the Petitioner.
Mr. Saurabh More a/w Mr. Vaibhav Parab, Advocate for the Respondent
No.2.
Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 15th SEPTEMBER, 2022.

PER COURT:

1. The Petitioners have challenged the order dated 23rd February, 2022 passed by learned Additional Sessions Judge, Bombay rejecting the application for condonation of delay.
2. The Petitioners have challenged the order issuing process passed by the Court of learned Metropolitan Magistrate, 4th Court, Girgaon, Mumbai in CC No.488/SS/2018 for an offence under section 500 of Indian Penal Code by preferring Revision Application before the Sessions Court. There was delay of 62 days in preferring the said application. The Petitioner preferred an application for condonation of delay. Application was rejected.
3. Learned Advocate for the Petitioners submit that, the Petitioners

are the members of the society. Process was issued for an offence under Section 500 of Indian Penal Code, against all the Eighteen Petitioners. The documents are voluminous. The delay was not deliberate. In the interest of justice delay may be condoned and the Petitioner may be given an opportunity to challenge the order issuing process on merits.

4. Learned Advocate for Respondent No.2/complainant submitted that, the Petitioners had not given any explanation for condonation of delay. The petitioners were required to take immediate steps for challenging order. They cannot be lethargic about exercising their right if any. The certified copy was not obtained immediately. The petitioners did not appear before the trial court, on receipt of the summons and thus belatedly preferred Revision Application. The learned Sessions Judge has rightly rejected the application since there was no explanation for condonation of delay.

5. Perused the documents on record. There are about eighteen Petitioners. All of them are members of housing society. The complainant is also one of the member of society. It is a settled law that, as far as possible the parties must be given an opportunity to challenge the proceedings on merits. Delay is not gross. It does not appear that, it is deliberate. Hence, delay of about 62 days in preferring Revision Application. In the interest of justice delay can be condoned.

ORDER

- i. Criminal Writ Petition No. 2018 of 2022 is allowed.
- ii. Order dated 23rd February, 2022 passed by the learned Sessions Judge rejecting the application for condonation of delay is set aside.
- iii. The delay in preferring Revision Application challenging the order issuing process dated 1st August, 2019 is condoned and the Sessions Court is directed to hear the Revision Application on merits.
- iv. The delay is condoned, subject to payment of cost of Rs.5,000/- to be paid to the complainant.
- v. The Sessions Court shall decide the Revision Application expeditiously.
- vi. The cost to be paid within period of three weeks from today.

(PRAKASH D. NAIK, J.)