

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

CRIMINAL APPLICATION (APPA) NO. 65 OF 2021

Sunanda Narayan Deshmukh Vs. Meena Changoiwala and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.B.Mirza, Advocate for the applicant

Mr. Anil Mardikar, Senior Counsel assisted by Mr. Ved Deshpande, learned counsel for
respondent Nos. 1 and 2

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/07/2022

1] Heard Mr. Mirza, learned counsel for the applicant and Mr. Anil Mardikar, learned senior counsel assisted by Mr. Deshpande, counsel for Respondent Nos.1 and 2.

2] Criminal Application (APPA) No. 65/2021 seeks condonation of delay of 1303 days in filing an appeal to challenge the order dated 29.4.2017, whereby the complaint under Section 138 of N.I Act came to be dismissed in default under Section 256 of Cr.PC and the accused was discharged.

3] It is contended that the applicant is an old lady of 65 years and had entrusted the matter to Advocate Chadrakant Ishwardas Thanvi of Akola, who had filed the complaint and the applicant was assured that as and when her appearance would be required in the Court, she would be informed. It is contended that

the trust placed upon the counsel was misplaced, as no intimation was given to the complainant and therefore, the applicant was not aware regarding the dismissal of the complaint by the order dated 29.4.2017. It is further contended that applicant's sister has already lodged FIR against the counsel in some matters. It is therefore submitted that once the knowledge was acquired, the applicant applied for certified copy on 16.09.2019 which was received on 21.11.2019 and was handed over to the counsel in December, 2019 for filing of the revision and the application for condoning delay, however, since Covid 19 took over the event, the application and the appeal came to be filed on 07.01.2021. It is therefore, submitted that the delay occasioned needs to be condoned on the aforesaid ground.

4] Mr. Mardikar, learned senior counsel for respondents opposes the contention and submits that the record indicates that the conduct of the applicant is of procrastination and non-prosecution. He submits that the complaint came to be filed in the year 2012 and was fixed for verification on 18.10.2012, however, till 3.12.2016, nearly a period of 4 years the verification was not done. It was done on 3.12.2016. From 17.12.2016, it was kept for steps, however, since no step was taken, on 29.4.2017 the complaint came to be dismissed in default. It is therefore contended that the record would indicate that there is no justification found in the

applicant from her above conduct. It is submitted that even though the complaint came to be dismissed on 29.4.2017, the application for certified copy was filed only on 16.9.2019, nearly after a period of 2½ years from the date of dismissal of the complaint. Though the certified copy was received on 21.11.2019, the present application has been filed on 7.1.2021, which conduct does not in his contention merit any leniency to be shown to the applicant.

5] In **Sunanda Narayan Deshmukh vrs. Needhi Changoiwala**, Criminal Application (APPA) No. 69/2021, decided on 23.06.2022, I have already held that it is not permissible for a client to raise a plea that he/she was not informed by the counsel, as it is equally the duty of the complainant/client to be abreast of the proceedings as there are multiple stages where the presence of the complainant/client is required. It therefore does not lie with the applicant to contend that she was not informed by the counsel. The facts in the present matter are not dis-similar to what was the position in Criminal Application (APPA) No. 69/2021, except for the position that the order dismissing the complaint has been passed on 29.4.2017, which reduces the quantum of delay to 3 years 6 months and 2 days (1303 days). Since it is trite position of law, that matters are to be decided on merit, hence considering the quantum of delay and the fact that a major portion of the same is covered by the Covid-19

pandemic period, the same is hereby condoned, however considering the conduct of the applicant, the same has to be at a cost which would ensure speedy prosecution of the proceedings by the applicant.

6] The Criminal Application (APPA) No. 65/2021 is therefore, allowed, however subject to a cost of Rs.20,000/- (Rupees Twenty Thousand only) to be deposited by the applicant with the High Court Legal Services Sub Committee, Nagpur, as a condition precedent to register the appeal. The cost should be deposited with two weeks.

7] It is made clear that if the cost is not so deposited, the application for condonation of delay shall stand dismissed without reference to the Court.

8] If the cost is so deposited, the office to register the appeal.

JUDGE

Rvjalit