

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

CRIMINAL APPLICATION NO.472 OF 2023

Raviraj Takawane Applicant
Versus
State of Maharashtra
and another Respondents

Mr. Siddharth Shankar, Advocate a/w. Sajid Sayed i/b.
Agarwal and Dhanuka Legal for the Applicant.

Mr. Arfan Sait, APP for the Respondent-State.

Ms. Roshni Naik, Advocate i/b. Anil Agarwal for the
Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th OCTOBER, 2023

P.C. :

1. Heard Mr. Siddharth Shankar, learned counsel
for the Applicant, Mr. Arfan Sait, learned APP for the
Respondent No.1-State and Ms. Roshni Naik, learned counsel
for the Respondent No.2.

2. The Applicant has preferred this application for
setting aside the order dated 18.3.2023 passed by the
Additional Sessions Judge in Criminal M.A.
No.0100463/2023 thereby the Applicant's application for

condonation of delay of 122 days in preferring Revision Application was rejected.

3. The Applicant is the original accused No.4 in Complaint No.971/2021 before the Additional Chief Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. Learned Magistrate issued process against all the accused, including the present Applicant, under Section 138 read with Section 141 of the Negotiable Instruments Act. Said order was passed on 27.6.2022. The Applicant wanted to challenge that order by way of Revision Application before the Sessions Court. There was delay of 122 days in preferring Revision Application. Said delay of 122 days was not condoned and, therefore, the Applicant has preferred this application.

4. Learned counsel for the Applicant submitted that though the order was passed on 27.6.2022, the summons was served on him on 1.8.2022 and, therefore, the limitation for filing Revision Application was upto 29.10.2022. However, the Applicant took some time to engage Advocates

and for giving instructions to the Advocates. The delay was not intentional. The Application preferred before the Sessions Court also mentions that because of the celebrations of Navratri, Diwali and New Year, there was further delay in preferring the application. Learned Additional Sessions Judge considered all these grounds and rejected the application for condonation of delay. He did not accept the ground that, because of festive celebrations the Applicant could not approach the Court earlier.

5. Learned counsel for the Applicant today submitted that his main reason for approaching the Court belatedly was that the Applicant could not engage an Advocate and could not give instructions. Learned counsel is not pressing the ground of celebrations of festivals. He further submitted that during the pandemic the Applicant had suffered from COVID-19 infection and, therefore, there were health issues with him.

6. Learned counsel for the Respondent No.2-original complainant tendered an affidavit-in-reply which is

taken on record. She has strongly opposed this application. She submitted that celebration of festivals can never be a ground for condonation of delay. She submitted that actually the delay is 247 days and not 122 days as claimed by the Applicant.

7. I have considered these submissions. It is true that no fault can be found with the learned Sessions Judge's observations that the celebrations of festivals cannot be a ground for condoning the delay. To that extent I am also not inclined to accept that ground for condoning the delay. Even learned counsel for the Applicant has not pressed that ground for condoning the delay.

8. However, the other ground of spending time in engaging an Advocate and giving instructions, can be taken into consideration. As submitted by learned counsel for the Applicant, the Applicant was also suffering from health issues and, therefore, in the interest of justice the matter needs to be decided on merits by the Sessions Court. Therefore, purely from that point of view, I am inclined to

condone the delay in approaching the Court of Sessions.

9. Learned counsel for the complainant-Respondent No.2 submitted that the plea of the Applicant is already recorded and, therefore, in any case the Revision Application would not be maintainable. This submission is important. It can be taken into consideration by the Additional Sessions Judge, if the Revision Application is heard by him on merits.

10. Considering this discussion, in the interest of justice I am inclined to allow this application; though I do not find fault with the learned Judge's reasoning about not accepting the ground of celebration of festivals. However, considering this background, some reasonable cost is required to be imposed on the Applicant.

11. Hence, the following order:

:: O R D E R ::

- i. The order dated 18.3.2023 passed in Criminal M.A. No.0100463/2023 passed by the Additional Sessions Judge, Greater Mumbai is set aside.
- ii. The delay in approaching the Sessions Court,

Mumbai by way of Criminal Revision Application caused by the Applicant is condoned. The Registry of the Sessions Court shall process the Revision Application further.

- iii. Learned Additional Sessions Judge, Mumbai shall decide the Criminal Revision Application on merits of the matter in accordance with law.
- iv. The question of maintainability of the Revision Application after recording of the plea as well as other questions on merits are specifically left open.
- v. The Applicant shall deposit cost of Rs.5,000/- (Rupees Five Thousand Only) with the Legal Services Authority of this Court within a period of three weeks from today.
- vi. With these observations Criminal Application is disposed of.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.10.20
18:04:16
+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)