

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

**INTERIM APPLICATION NO. 1703 OF 2019
IN
APPLICATION FOR LEAVE TO APPEAL (ST) NO. 683 OF 2019**

Deepak Balkrishan Sekhri ...Applicant

vs.

Pishu Mulchand Mohtani and Ors. ...Respondents

Deepal Thakkar - Advocate for the Applicant

Shabnam Latiwala - Advocate for the Respondent Nos. 1 to 15

Mr. H. J. Dedhia – APP for the State

CORAM : S. M. MODAK, J.

DATE : 13th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant and learned Advocate for the Respondent Nos. 1 to 15 for the original accused and learned APP.
2. The Court of the Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai as per order dated 06/03/2019, was pleased to dismiss the complaint by exercising the power under Section 256 of the Code of Criminal Procedure.
3. Process was issued for the offence punishable under Sections 290, 336, 425, 426 and 427 of the Indian Penal Code. When

the complaint was dismissed the stage was recording of evidence. The complaint was filed through power of attorney holder. Power of attorney has started giving of evidence and subsequently she remained absent.

4. Learned Advocate for the Respondents made various submissions as to how complaint is not maintainable and how the Complainant has played dilatory tactics and how it is caused inconvenience to the Respondents who are senior citizens. So far as merits of the matter is concerned while deciding this application, this Court is not expected to express any opinion.

5. After dismissal of the complaint, instead of approaching this Court, the Complainant has filed Revision Application before the City Civil Court alongwith delay condonation application. Their copies are not filed alongwith this application. Copy of the unsigned order passed by the Court of Additional Sessions Judge on 11/02/2019 is annexed. It reads as follows:-

“Adv. Deepal Thakar for applicant filed application for taking the matter on today’s board. Application t.o.r. marked Exh.-3

O-allowed.

She filed application Exh.-4 for withdrawal of the

application as applicant intends to move before Hon High Court, which is proper forum.

Cri. M.A. 2224/19 is disposed off as withdrawn.”

6. That proceedings were withdrawn because the Applicant intends to move this Court and accordingly, those proceedings were disposed of as withdrawn on 11/12/2019.

7. It is contended that there was delay in filing those proceedings before the City Civil Court, now the delay in approaching this Court is 222 days. There are two reasons quoted in the condonation of delay:-

- (i) Prosecuting the proceedings before the City Civil Court.
- (ii) The power of attorney was in Dubai for attending her pregnant daughter-in-law and she was not available in filing the revision before the City civil Court.

8. All these grounds are objected on behalf of the Respondents. Respondents have chosen to hear this matter without filing reply and hence arguments are heard.

9. It is true that if someone is prosecuting the wrong remedy bonafidely, the law recognizes it as a good ground for condonation of delay. In this case, the delay is not only caused on

account of prosecuting that remedy but the delay earlier to approaching the City Civil Court on account of non-availability of the Applicant's power of attorney is also another cause.

10. I asked learned Advocate to read the relevant pleadings in the present application. She read paragraph nos. 28 to 32. It is true that in para no. 32, she has pleaded about prosecuting criminal revision application. Whereas in para no. 31 she has pleaded about what are the effect of dismissal of the complaint on the complainant. Whereas in para nos. 29 and 30 she has pleaded about why she could not attend the Court of Metropolitan Magistrate.

11. On reading the same, I tried to find out what was reason for condonation of delay from the date of impugned order till the date of approaching the City Civil Court. It is true that delay is only for 84 days. However after reading para nos. 28 and 30, I do not find any pleading of the facts as to why there was delay in approaching the City Civil Court. It is not made clear when power of attorney has returned back to India. In fact the Respondents' counsel laid emphasis on not filing any documents just like passport and visa. According to her Respondent's power of attorney has very much visited India during that period for attending other proceedings

including the proceedings before the Income Tax Act. According to her if these documents could have been filed it could have falsified the contention of the Applicant for condonation of the delay.

12. It is not the question of number of days but it is the question whether it is explained and whether it is supported by documents. So I think the sufficient grounds are not pleaded in the application and even it is not supported by documents. So I do not think that delay can be condoned as no sufficient cause is disclosed. Hence Interim application for condonation of delay is dismissed and accordingly, application for leave to appeals is dismissed.

[S. M. MODAK, J.]