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IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL MISC. APPLICATION NO. 78 OF 2022
IN
CRIMINAL APPEAL NO. 634 OF 2022 (F)
WITH
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BALKRISHNA D. BANDEKAR PARIT ... APPLICANT
VS
PANKAJ A. SAWANT ... RESPONDENT

Ms. Bavina Kukalekar, Advocate for the Applicant.

Mr. Shailesh Redkar with Ms. Namrata Gaonkar, Advocates
for the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 9th JULY 2024

ORAL ORDER:

1. Heard Ms. Kukalekar for the Applicant and Mr. Shailesh Redkar for the Respondent.

2. This is an Application for condonation of delay of 1424 days in filing the Criminal Appeal thereby challenging the order passed by the learned Magistrate dated 23.08.2018.

3. The learned Counsel for the Applicant would submit that the Applicant has business for which, he was often required to travel to Kolhapur and he even used to stay there. She would submit that the complaint was filed against the Respondent for the offence punishable under Section 138 of the N.I. Act. Even process was issued against the Respondent by the concerned Magistrate and thereafter, the matter was taken up for further trial.

4. The learned Counsel for the Applicant would submit that initially, the Applicant used to remain present along with his Advocate but due to his business activities, it was not possible for him to attend each and every date. He submits that the Applicant had engaged an Advocate and he was under bonafide belief that his Advocate was attending the proceedings regularly.

5. The learned Counsel for the Applicant would submit that thereafter, the Applicant lost track of the said matter and due to the COVID pandemic, he was unable to contact his Advocate, though he tried on many occasions. She would further submit that only in the year 2022 when the Applicant engaged another Advocate, it was informed to him that his complaint was dismissed on 23.08.2018 for default. She would therefore submit that the

absence of the Applicant was due to his business activities and later on due to the COVID pandemic and therefore, there is sufficient cause to condone the delay.

6. Mr. Redkar appearing for the Respondent would submit that the Applicant is a permanent resident of Calangute, Goa and therefore, it is hard to believe that he was not able to contact his Advocate or attend the matter which was filed before the Mapusa Court. He submits that the Applicant was totally negligent about his own matter and despite being given opportunities by the learned Trial Court, the Applicant failed to appear and contest the matter.

7. The complaint was filed on 06.10.2017 and thereafter, it was placed for verification of the Complainant. It shows that the process was issued somewhere in October 2017 and thereafter, the Respondent/Accused appeared. The record clearly goes to show that the Complainant remained absent on 26.06.2018, 13.07.2018, 24.07.2018 and finally on 23.08.2018. The learned Trial Court after giving four opportunities to the Complainant, dismissed the said complaint for default as the Complainant was not attending the proceedings.

8. The reasons which are coming forward in the present Application would clearly go to show that no specific details with regard to his business activities are disclosed. In paragraph 13, it is claimed by the Applicant that he has a business set up in Chandgad, Kolhapur District, however, in the same breath, he claims that for managing such business activities he often resides in Kolhapur or travels from Goa to Kolhapur. The record clearly goes to show that for four consecutive dates, the Applicant/Complainant remained absent before the concerned Magistrate. Even his Advocate remained absent.

9. Since it is a private complaint filed for taking action against the Respondent/Accused, the Complainant was required to remain present before the Court. The record clearly goes to show that even no Application was filed for exemption. The learned Magistrate adjourned the matter on three occasions, even though the Complainant was not present before it.

10. The cause title of the present Application clearly goes to show that the Applicant is a businessman and is a resident of Gauravaddo, Calangute. Even if it is accepted that he has to travel out of Goa for business activities, his permanent address is shown in the cause title that he is residing at Calangute. The case was

tried in Mapusa Court and his Advocate who appeared before the Mapusa Court, also has his office at Mapusa. It is difficult to believe that the Applicant was unable to contact his Advocate for four years i.e. from August 2018 till the time when he got the knowledge somewhere in the year 2022 that his case was dismissed for want of prosecution.

11. The default on the part of the Complainant cannot be just ignored by blaming the concerned Advocate. The Applicant was duty-bound to attend the proceedings in person being the Complainant. It is no doubt true that his Advocate was also equally responsible for not attending the proceedings, however, as rightly pointed out by Mr. Redkar, the concerned Advocate even informed the concerned Magistrate that he would file an Application for withdrawal of his appearance. This shows that the Applicant even failed to contact his Advocate to give proper instructions.

12. The reasons which are disclosed in the present Application about his business activities are vague and without any substance. The delay is more than 1420 days. There is no explanation for considering such a huge delay. Accordingly, no case is made out

for condoning such delay. The Application, therefore, stands rejected.

13. Consequently, Criminal Miscellaneous Application No. 635 of 2022 (F) and Criminal Appeal No. 634 of 2022 (F) stand disposed of.

BHARAT P. DESHPANDE, J.