



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

CRIMINAL APPLICATION (APPA) NO. 414 OF 2024
IN
CRIMINAL APPEAL STAMP NO. 3387 OF 2024

Suresh Gangaram Gawande, deceased thr. his
LR's Pratibha Suresh Gawande and others.

Vs

Shyamrao Haribhau Bhivate

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. PU. Kavishwar, counsel for applicants/appellants.

Mr. N. G. Tikar, counsel with Mr. R.D. Karode, counsel for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/08/2024.

1. Heard.
2. By this application, the applicants are seeking condonation of delay which is caused in preferring the appeal against the acquittal.
3. Learned counsel for the applicants submitted that the father of the applicants No. 2, 3, and 4 has filed a complaint bearing No. S.C.C. No. 549/2017 against the respondent before the Judicial Magistrate First Class, Telhara, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1981.
4. The learned Judicial Magistrate First Class, Telhara, was pleased to dismiss the complaint on 07/10/2023 and acquitted the respondent. After disposal of the complaint, the applicants ought to have file the appeal within the

limitation period, but the applicants No. 3 and 4 were suffering from sickness, and they could not approach their counsel to prefer an appeal. As far as applicant No.1 is concerned, who is an old lady and not aware about the legal proceedings, applicant No.2 was taking care of applicant Nos.3 and 4, and therefore, a delay of 81 days is caused in preferring the appeal. There is just and reasonable cause for condonation of delay. The financial condition of the applicants was also weak, and therefore they could not incur the expenses to file the proceedings before this Court, which was also one of the reasons for causing the delay.

5. Learned counsel for the respondent strongly opposed the said application on the ground that there is no just and reasonable cause for condonation of delay, in view of that application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned counsel for the respondent, perused the application and the medical certificates filed on record. The reasons mentioned in the application, in addition to the sickness, is that due to the financial position of the applicants, as they have incurred huge expenses on the medical treatment of applicants Nos. 3 and 4, and applicant No. 1 is an old lady who is not an earning member. The application is not filed along with the appeal memo due to the to the period of limitation.

7. It is well settled that while considering the delay application, the applicant has set out the reasonable cause

and justifiable reason for condonation of delay to satisfy the court. At the same time, it is also well settled that while considering the delay application, the Court should not enter into the technicalities, but the opportunities are to be given to the parties to raise their dispute on its own merits. The liberal approach is to be taken by the court by considering the delay application and not the pedantic approach.

8. Considering the reasons mentioned in the application, the application deserves to be allowed. At the same time, considering the fact that the non-applicant is dragged in unnecessary litigation, some costs require to be imposed on the applicants. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The application is allowed.
- b] Delay of 81 days in filing the appeal is condoned, subject to the cost of Rs. 3000/-.
- c] The amount of costs be paid to the respondent.
- e] After payment of costs, the application for leave to file an appeal be registered.

9. The criminal application (APPA) No. 414/2024 is disposed of.

[URMILA JOSHI-PHALKE, J.]