



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

CRIMINAL APPLICATION (APPA) NO.710/2023
IN
CRIMINAL APPEAL ST.NO.4946/2023
M/s.Veena Enterprises, thr.its Proprietor Shri Prakash s/o Rameshchandra
Sharma
and anr
..vs..
Smt.Sangita w/o Rakesh Sharma

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

Court's or Judge's Order

.....
Shri M.R.Puranik, Counsel for Applicants.
Shri Abhay Sambre, Counsel for Non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 08/03/2024
PRONOUNCED ON : 08/04/2024

1. Heard learned counsel Shri M.R.Puranik for applicants
and learned counsel Shri Abhay Sambre for non-applicants.

2. By this application, applicants are seeking
condonation of delay which is caused in preferring the appeal
against order dated 16.3.2019 passed by learned Joint C.J.J.D. and
J.M.F.C., Nagpur in Summary Criminal Complaint No.17873/2018
dismissing the complaint under Section 203 of the Code of
Criminal Procedure by which the non-applicant is acquitted of
offence punishable under Section 138 of the Negotiable

Instruments Act, 1881(the said Act).

3. Learned counsel for applicants submitted that applicants have filed a criminal complaint against the non-applicant under Section 138 of the said Act contending that the non-applicant, who is owner of Nazul Plot Nos.4 and 5, at Mouza Jaritpatka, district Nagpur, City Survey No.2063, within the limits of Nagpur Improvement Trust and Nagpur Municipal Corporation, agreed to sell the plot admeasuring 5000 square feet. Accordingly, agreement to sale was executed. The non-applicant insisted to pay 1/3 consideration amount and accordingly applicants handed Rs.75.00 lacs to the non-applicant. After execution of the said agreement, no sale deed was executed in favour of applicants and out of Rs.75.00 lacs the non-applicant paid Rs.3,10,000/- in cash and issued two cheques of Rs.18.00 lacs bearing No.17356 and Rs.53,90,000 bearing No.161091 drawn on Union Bank of India Jaripatka Branch. On depositing, the said cheques were returned back with an endorsement "funds insufficient" and, therefore, applicants issued notice. After issuance of the notice, the non-applicant has not paid the amount and, therefore, the applicant filed the complaint under Section 138 of the said Act.

4. After registration of the criminal complaint, counsel

appearing for applicants never informed about further procedure and applicants were under impression that counsel is attending the matter regularly. They were making enquiry with counsel, but counsel informed that he would inform as and when required. Thereafter, during covid pandemic situation also, applicants were enquiring regarding updates of their case, but their counsel has not informed and assigned one or other reasons that due to covid situation, the courts are close. The other reasons given by counsel are that the courts are overburdened and he would inform whenever presence of applicants is necessary. In the year 2022, that is on 21.4.2022, counsel informed that he is unable to proceed with the matter and, therefore, applicants engaged another counsel and first time on 22.4.2022 they came to know that their complaint is dismissed at the stage of verification. Thereafter, they applied for certified copy and, thereafter, delay of 367 days is caused in preferring the appeal.

5. In support of his contentions, learned counsel for applicants placed reliance on the decision of this court in Criminal Application (APPA) No.575/2021 in Criminal Appeal No.405/2023 decided on 16.6.2023.

6. Learned counsel for the non-applicant strongly

opposed the application on ground that there is no sufficient and satisfactory reason given by applicants. There is a delay of 1200 days which is not explained. The applicants are negligent in prosecuting remedies and they did not approached this court with a clean hand. Every day's delay needs to be explained. It is further submitted an application is served to the non-applicant and copy of the affidavit shows that there is 1200 days' delay. Affidavit before the court shows 367 days' delay. Initially, the complaint was filed belatedly. The Magistrate has condoned the delay and, thereafter, applicants were not diligent and after sufficient opportunity, the complaint is dismissed. Learned counsel prays for rejection of the application.

7. In support of his contentions, he placed reliance on following decisions:

1. H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and anr, reported (2015)1 SCC 680;

2. Majji Sannemma @ Sanyasirao vs. Reddy Sridevi and ors, reported in 2022(2) Mh.L.J.9;

3. Pundlik Jalam Patil (dead) by LRs vs. Executive Engineer, Jalgaon Medium Project and anr, reported in (2008)17 SCC 448.

8. Perusal of the application; the reply filed by the non-

applicant, and roznama of proceedings show that Misc.Criminal Application No.4482/2016 was filed on 27.10.2016. Thereafter, there was continuous absence of applicants and their counsel. On 5.10.2017, counsel has attended the application and delay was condoned subject to costs. The complaint was registered and kept for verification. The order passed by the Magistrate shows that by order below Exhibit-1 on 21.1.2019 it was directed to take appropriate steps which are not taken and the complaint was dismissed 16.3.2019. The applicants have filed affidavit stating that they completely relied on their counsel who informed them that whenever his presence is required, he would intimate him and therefore, his absence was recorded. From roznama, it reveals that counsel of applicants was not diligent.

9. It is well settled that negligence of counsel should not jeopardize interests of litigant.

10. There is material on record to show that counsel who was engaged by applicants has not attended the proceedings and the affidavit of applicants shows that though they were enquiring regularly, counsel has not informed them and they came to know about dismissal of the complaint first time when he engaged another counsel.

11. Learned counsel for the non-applicant vehemently submitted that applicants were not diligent before the trial court also since beginning. They cannot throw blame their counsel.

12. In the case of **H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and anr *supra***, as relied by learned counsel for the non-applicant, it is held that lack of bona fides and gross negligence on part of appellants and stringent scrutiny of the appellant's expressions needed to determine sufficiency of cause of such delay. It is held that The Respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days delay involved in filing the appeals. The Honourable Apex Court, by referring its earlier judgments, held that when we apply principles laid down in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 SCC 649, it has to be stated that failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides

as displayed on the part of the respondents.

13. In another judgment in the case of **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi and *supra***, the Honourable Apex Court held that no explanation much less a sufficient or satisfactory explanation offered by the appellant. The impugned order passed by the High Court condoning delay is unsustainable.

14. Perusal of the judgments relied upon by the non-applicant as well as applicants reveals that as per the submission of learned counsel for applicants that applicants have their *bona fide* and also explained the delay, applicants first time came to know about dismissal of the complaint when they engaged another counsel. There is no dispute as to the fact that for condonation of delay the person claiming for the relief of condonation has to show sufficient cause and his *bona fides*.

15. Thus, it is well settled that there should not be a pedantic approach, but doctrine that is to be kept in mind is that the matter is to be dealt with a rational common sense pragmatic manner and cause of substantial justice deserves to be preferred over technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of

culpable negligence and that the courts are not supposed to legalize injustice on technical grounds as it is the duty of the courts to remove injustice.

16. The Honourable Apex Court, in the case **Collector, Land Acquisition, Anantnag and anr vs. Mst Katiji and ors, reported in (1987)2 SCC 107**, while condoning the delay held that the legislature has conferred the power to condone delay by enacting Section of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. As such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a

meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits."

17. It is true that the court is expected to receive liberal construction. It is to be seen whether condonation is necessary to advance substantial justice. Section 5 of the Limitation Act at two places used words (may). This shows that the court has discretionary powers in this regard. Section 5 further shows that parties seeking extension of prescribed period is required to satisfy the court that he had sufficient cause for not preferring the appeal/application and that arose within such period and continued thereafter. Thus, existence of sufficient cause is a conditions for use of discretion by the court.

18. In the light of the law laid down by the Honourable Apex Court, has laid down that the purpose of provision is to advance substantial justice and so the Court using discretion must *prima facie* ascertain whether denying of relief would amount to frustrating meritorious case and denying substantial justice. As care needs to be taken in this regard, it can be said that the expression "sufficient cause" is widely elastic. In one case, a ground may not be acceptable as sufficient ground for condonation of delay but the same ground in other case, in view of facts and circumstances of that case, may be a valid ground for

condonation of delay. In one case if Court finds that the party seeking condonation has arguable case, there is *prima facie* merit in the matter, the Court may hold on the basis of explanation given by the party that sufficient cause is shown. In other case even when the ground is the same, if Court finds that condoning the delay would unnecessarily cause harassment to the other side, it will be defeating the interests of justice, the party applying for condonation has is no arguable case, the Court may refuse to condone the delay.

19. Thus, Section 5 of the Act does not require “good cause”, but it requires “sufficient cause” which is something more than good cause. The expression “sufficient cause” is not defined, but it is laid down by the various courts that it must mean a cause which is beyond the control of the parties. Any cause which prevents parties approaching the court within time is sufficient. It only needs to be observed that the cause must have arise within prescribed time and the cause must have continued beyond that.

20. Returning back to the facts of the present case, the ground raised by applicants is that counsel has not informed. It is true that litigant always depends upon their counsel. Roznama also shows that counsel has not attended the proceedings. The

affidavit of the applicants shows that, “as counsel informed them that whenever their presence is required, they would be called and they trusted his words. The applicants have not attended the proceedings appears to be reasonable and sufficient cause.

21. In this view of the matter, I pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) Delay of 1200 days is condoned. However, the same shall be subject to costs of Rs.5000/- to be paid to the non-applicant within a period of two weeks from today.

(3) Office to ensure that the application seeking leave to file appeal is registered after payment of the costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!