



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.1477 OF 2023

1. Bhushan Shamrao Bharsakale
Aged 21 years, Occu. Labourer
R/o Talagaon, Tq. Telhara,
Dist. Akola.
 2. Gajanan Pralhadrao Harsule
Aged 53 years, Occu. Farmer
R/o Lakhpuri, Tq. Murtijapur,
Dist. Akola.
 3. Anil Pralhadrao Harsule
Aged 40 years, Occu: Service,
R/o Lakhpur, Tq. Murtijapur,
Dist. Akola.
 4. Sunil Pralhadrao Harsule
Aged 40 years, Occu. Service,
R/o Lakhpur, Tq. Murtijapur,
Dist. Akola.
- **APPLICANTS**

...V E R S U S...

The State of Maharashtra
through PSO Police Station
Murtijapur, District Akola. **NON-APPLICANT**

Mr. H. Bawane, Advocate for Applicants.
Mr. A. M. Kadukar, APP for Non-Applicant/State.

CORAM: **M. W. CHANDWANI, JJ.**
DATE: **17th JANUARY, 2024.**

ORAL JUDGMENT:

Heard finally with the consent of the parties.

2. Issue notice, returnable forthwith.
3. Mr. A. M. Kadukar, the learned Additional Public Prosecutor waives service of notice for the non-applicant/State.
4. The order dated 25.07.2023 passed by the learned Additional Sessions Judge, Akola thereby rejecting the application for condonation of delay in preferring the revision has been challenged in this petition.
5. The applicants have been charge-sheeted by Police Station Murtizapur (Gramin) for offence punishable under Sections 326, 324, 323 and 504 read with Section 34 of the Indian Penal Code vide Regular Criminal Case No.134/2022 before the learned J.M.F.C., Murtizapur. On 16.2.2023 the learned J.M.F.C., Murtizapur framed charge against the applicants for aforesaid offences. The applicants wanted to challenge the framing of charge before the learned Additional Sessions Judge. However, there was delay in preferring the revision therefore, the application for condonation of delay came to be filed before the learned

Additional Sessions Judge which came to be rejected by the impugned order.

6. The period of limitation for filing the revision is 90 days. The charge has been framed on 16.02.2023. The time to file revision expired on 15.05.2023, whereas the application for condonation of delay has been moved on 31.06.2023. It appears that there was delay of 35 days in preferring the revision before the learned Additional Sessions Judge. The reason for rejection is that the applicant did not explain the delay after getting certified copies of the order.

7. The learned counsel for the applicants submit that in para 4 the applicants have mentioned that after the receipt of certified copy they contacted their counsel to take steps and handed-over copy to their counsel. It is submitted by learned counsel for the applicants that for preparing application and presenting the same, it took time. The learned Additional Sessions Judge took pedantic approach and on technical reason, the substantial justice has been denied to the applicants. To buttress the submission, he has placed reliance on the case of ***Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others*** reported in ***AIR 1987 S.C. 1353*** wherein the Apex Court has held

in para 3:

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.

8. No doubt, the applicants have not given details of each day after handing over certified copy to the Advocate but broadly pleaded that the applicants had instructed to their counsel to take steps and handed over certified copy. In the application before this Court they have contended on oath that though they had requested the counsel to file application but, he filed it only on 21st June, 2023. The delay is of only 35 days, which does not appears to be intentional one, coupled with the fact that no prejudice would be caused to the non-applicant if delay is condoned. Substantial justice cannot be denied on technical reason. Hence, this order.

9. The application is allowed.

Judgment corrected as per order dtd. 02.02.2024
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10. The impugned order dated 25.07.2023 rejecting the application for condonation of delay of the applicants is quashed and set aside.

11. The delay of 35 days in preferring the revision application is condoned.

12. In the aforesaid terms the application is disposed of.

JUDGE

NSN