

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5104 OF 2025

Ghanshyam Sitaram Bidawatka

...Petitioner

Versus

Advait Kirtish Berde And Anr.

...Respondents

SANTOSH
SUBHASH
KULKARNI

Mr. Niraj Bidwatkar, for the Petitioner.

Mr. P. R. Malshe, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 3rd OCTOBER, 2025

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SANTOSH SUBHASH
KULKARNI
Date: 2025.10.03
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Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The petitioner is aggrieved by an order passed by the learned Sessions Judge on 10th September, 2025, whereby it was ruled that the service of copy of revision application on respondent No.1 – original complainant is not necessary, while considering the application for condonation of delay in preferring the revision application.
3. The learned Sessions Judge was of the view that at the stage of the consideration of the application for condonation of delay only the sufficiency of cause was required to be examined and not the grounds in the revision application.

4. It is evident that the learned Sessions Judge has taken very constricted view of the matter. The merits of the matter may also come into play, in a situation, where the learned Sessions Judge is satisfied about the *bona fides* of the cause ascribed for the delay and at the same time the opposition to the prayer for condonation of delay appears equally sturdy. In that event, on balance, the Court may delve into the merits of the matter.

5. A useful reference in this context can be made to a recent judgment of the Supreme Court in the case of *In the case of H. Guruswamy and others vs. A. Krishnalah since deceased by LR(s)*¹, wherein the Supreme Court expounded as to how and when the merits of the matter may come into play while deciding an application for condonation of delay, as under:

“16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It

1 2025 SCC Online SC 54.

is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay. ”

(emphasis supplied)

6. In this view of the matter and having regard to the limited nature of the grievance, this Court dose not consider it necessary to issue notice to the respondent – revision applicant.

7. A copy of the revision application be furnished to the petitioner to facilitate the filing of the reply to the application for condonation of delay within a period of one week from today.

8. The petitioner shall file an affidavit-in-reply to the application for condonation of delay within a week thereafter.

9. The petition stands disposed.

[N. J. JAMADAR, J.]