

(2013) 11 BOM CK 0130

In the Bombay High Court

Case No : Criminal Revision Application No. 60 of 2011

Babaji Tukaram Gawas

APPELLANT

Vs

Ashok Somnath Panigrahi and Another

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 1 BomCR(Cri) 729

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Judgement

U.V. Bakre, J.—Heard the learned Counsel appearing on behalf of the respective parties, only on the challenge to the impugned order. Amongst other prayers, in this criminal revision application, the applicant has prayed for quashing and setting aside the said order dated 18/8/2011 passed by the learned Additional Sessions Judge, Mapusa in Criminal Miscellaneous Application No. 33/2011.

2. In Criminal Case No. 127/OA/138/2009/C, the applicant was the accused and he has been convicted and sentenced for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 to undergo simple imprisonment for a period of four months and to pay compensation of Rs. 1,30,000/- (One lakh thirty thousand only) to the complainant within forty days and in default to undergo simple imprisonment for a period of four months.

3. Against the said judgment and order of conviction, the applicant had presented an appeal before the Sessions Judge and since there was a delay of about little more than an year in filing the appeal, he had filed the Criminal Miscellaneous Application No. 33/2011, for condonation of said delay. By the impugned order dated 18/8/2011, the said application for condonation of delay came to be dismissed by the learned Additional Sessions Judge, Mapusa.

4. In the impugned order, the learned Additional Sessions Judge has observed that the reasons for delay as stated by the applicant are only excuses to get the delay condoned and no sufficient ground has been made out to condone the

delay.

5. The learned Counsel appearing on behalf of the applicant submits that the delay was on account of sickness of the applicant due to fall from tree resulting into injuries all over the body and that in support of the said sickness, a medical certificate was produced before the learned Additional Sessions Judge. He, therefore, submitted that the delay was not intentional and that it had occurred due to reasons beyond the control of the applicant, on account of his sickness. The learned Counsel, appearing on behalf of the applicant, relied upon the judgment of the learned Single Judge of the Aurangabad Bench of this Court in the case of Shiv Mandhukar Giri Vs. The State of Maharashtra . He, therefore, urged that the impugned order is liable to be quashed and set aside.

6. On the other hand, the learned Counsel appearing on behalf of respondent No. 1 submits that no sufficient cause for long delay of one year has been shown by the applicant. He submitted that the medical certificate produced by the applicant was issued by an Homeopathic doctor from Dodamarg, Sindhudurg, Maharashtra, though the applicant is from Keri, Sattari, Goa. According to the learned Counsel, the learned Additional Sessions Judge has rightly rejected the application.

7. I have gone through the record and proceedings.

8. The reasons governing the settled principle that a liberal approach should be adopted in condonation of delay have been duly stated by the Hon''ble Supreme Court in the case of Vidharbha Sikshan Vyawasthapak Mahasangh Vs. State of Maharashtra and Others, . The said reasons are as follows:

i. "Ordinarily a litigant does not stand to benefit by lodging an appeal late.

ii. 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.

iii. "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.

iv. 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.

v. 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.

vi. 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.

9. In the case of "Shiv Madhukar Giri" (supra) relying upon the said case of "Mst Katiji and others" (supra), the delay was condoned. In the present case, the applicant has been sentenced to undergo simple imprisonment of four months and to pay compensation of Rs. .1,30,000/-. It can be reasonably said that the applicant would not gain anything by filing the appeal belatedly. On the contrary, he would run a serious risk. The records reveal that the applicant had explained the delay by filing affidavit and the medical certificate. There was no affidavit-in-reply filed by the respondent No. 1, but there was a mere reply filed by the learned Counsel appearing on behalf of the respondent No. 1. The Apex Court in the case of "Mst Katiji and ors" (supra) has cautioned that it is common knowledge that it has been making a justifiably liberal approach in matters instituted in the Supreme Court, but the message does not appear to have percolated down to all the other Courts in the hierarchy. There are no mala fides in the delay which has occurred in filing the criminal appeal against the judgment and order dated 18/3/2010 passed in Criminal Case No. 127/OA/138/2009/C and the said delay does not appear to be willful and intentional. In the interest of justice, the said delay is required to be condoned. I hold that sufficient cause for the same has been shown. However, it can be certainly said that inconvenience has been caused to the respondent No. 1, which needs to be made good. Since the delay in filing the appeal before the learned Sessions Court is being condoned, the matter will have to be remanded to the learned Additional Sessions Court for hearing and disposal of the said appeal on merits. In such circumstances, I am not inclined to go into the merits of the case and decide prayer (b) of this revision application.

10. In view of the above, the Revision Application is partly allowed.

a) The impugned order dated 18/8/2011 passed by the Additional Sessions Judge, Panaji in Criminal Misc. application No. 33/2011 is quashed and set aside.

b) Delay in filing the appeal against the judgment and order dated 18/3/2010 in Case No. 127/OA/138/2009/C is condoned.

c) Let the appeal be registered subject to payment of costs of Rs. 15,000/- (Rupees Fifteen thousand only) to respondent No. 1 as condition precedent. The appeal shall be registered, provided the petitioner deposits the said costs in the concerned Court where the said appeal has been presented.

d) The other formalities like bail, stay of sentence etc. shall be completed before the concerned Court.

Rule is made absolute in the aforesaid terms. The Criminal Revision application stands disposed of accordingly.