

(2010) 03 BOM CK 0112

In the Bombay High Court

Case No : Criminal Revision Application No. 75 of 2010

Shiv Mandhukar Giri

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 408

Citation : (2010) 03 BOM CK 0112

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.B. Bhapkar, for the Appellant; Vaishali Shinde, APP, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—Rule. Rule made returnable forthwith.

2. By consent of the parties, the present criminal revision application is taken up for final hearing, at the stage of admission.

3. By present criminal revision application, applicant (original accused) has challenged the judgment and order dated 25.02.2010 passed by the learned Additional Sessions Judge-1, Aurangabad in criminal misc. application No. 35/2010, thereby rejecting an application of applicant for condonation of delay and depriving him to file appeal against conviction.

4. Admittedly, applicant herein was convicted in R.C.C. No. 2156/2007 by the learned 5th Judicial Magistrate, First Class, Aurangabad for the offence punishable u/s 408 of the Indian Penal Code and was sentenced to suffer R.I. for a period of one year and to pay fine of Rs. 1,000/in default to suffer S.I. for two months. Further, applicant (original accused) ought to have filed appeal, if any, within prescribed period of limitation i.e. one month, but applicant herein failed to do so. After lapse of about 22 months from the date of said order, applicant

preferred appeal against said conviction along with application for condonation of delay i.e. criminal M.A. No. 35/2010 u/s 5 of Limitation Act and requested to condone said delay on ground that applicant was out of station for bread winning job, and since he is karta of family and whole family depends upon his income, he could not file appeal within prescribed period of limitation. He also contended that he was punctually attending the Court during pendency of trial and delay of 22 months caused in filing accompanying appeal was not intentional, deliberate and willful and same was accidental one. He further contended that, if the said delay is not condoned, great injustice would be caused to him, which can not be compensated by any means.

5. However, learned Additional Sessions Judge-1, Aurangabad, after hearing the said application i.e. criminal M.A. No. 35/2010 arrived at the conclusion that applicant accused failed to prove sufficient cause for condonation of delay and held that applicant failed to make out any case, and therefore, no liberal approach can be adopted and hence, ultimately, he rejected said application by order dated 25.02.2010. Being aggrieved and dissatisfied by said order, applicant has preferred the present criminal revision application, challenging legality, correctness and propriety of the said order.

6. After considering the rival submissions advanced by learned Counsel for parties, at the outset it is apparent that applicant came to be arrested on execution of non bailable warrant on 18.02.2010 and thereafter, applicant herein has preferred criminal M.A. No. 35/2010 for condonation of delay along with criminal appeal challenging conviction and sentence dated 6th May, 2008 within two days i.e. on 20th February, 2010. It appears that the judgment came to be pronounced on 6th May, 2008 by the learned 5th Judicial Magistrate, First Class, Aurangabad in absence of applicant accused. On the aforesaid background, applicant has stated in his application for condonation of delay that applicant was out of station for bread winning job and is karta of family and entire family depends upon his income, and therefore, he could not file appeal within prescribed period of limitation, which clearly indicate that applicant was in paucity of funds, and therefore, could not file appeal within a prescribed period of limitation. The Hon'ble Supreme Court has time and again reiterated the aim and object of the Constitution of India and keeping that in mind and considering the very preamble of the Constitution which resolves to secure to all its citizens the justice, social, economic and political and therefore, the access to justice can not be denied to the applicant herein.

7. Besides, the liberal view is required to be adopted and pragmatic approach is required to be taken rather than pedantic while considering the application for condonation of delay. The reliance can be very well placed on the Judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . The relevant portion is reproduced below:

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act 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. And 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.
8. In the light of the aforesaid observations, aspect of sufficient cause needs to be construed liberally and pragmatic approach is required to be taken rather than pedantic to enable the applicant herein to take recourse of doors of justice by filing appeal against conviction. Moreover, applicant herein can not be deprived of his right to file appeal against conviction, having the wider and broader perspective and therefore, interest of justice warrants that present criminal revision application be allowed by setting aside impugned judgment and order passed in Criminal M.A. No. 35/2010 by the learned Additional Sessions Judge-1, Aurangabad on 25.10.2010 rejecting application of applicant for condonation of delay.
9. Having comprehensive view of the matter and taking liberal and pragmatic approach and considering facts and circumstances in the present matter, there can not be any doubt that applicant herein has pleaded and proved a sufficient cause for condonation of delay and made out a case therefor, and hence, present application is required to be allowed giving opportunity to applicant herein to

exercise his right to appeal against conviction.

10. In the result, the present criminal revision application No. 75/2010 is allowed in terms of prayer clause `B" thereof and impugned judgment and order dated 25.02.2010 rendered by learned Additional Sessions Judge-1, Aurangabad in Criminal M.A. No. 35/2010 stands quashed and set aside and the learned Additional Sessions Judge-1, Aurangabad is directed to register and number appeal filed on 20th February, 2010 by applicant. Liberty to applicant to apply for bail before said Court and said Court to consider the said application preferred by applicant, if any, on its own merits, in accordance with law.