
(2013) 04 BOM CK 0134

In the Bombay High Court

Case No : Criminal Writ Petition No. 1071 of 2012

Yusuf Mehtab Qureshi

APPELLANT

Vs

Afzal Khan Safdar Khan and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2013) ALLMR(Cri) 2560

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Mohan N. Dhamal, for the Appellant; S.G. Kurup, for R. Nos. 1 to 7 and Ms. U.V. Kejariwal, APP, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—Rule. By consent Rule made returnable forthwith. Respondents waive service. By consent, calling for record and proceedings dispensed with. By consent heard finally, forthwith. The petitioner had filed a complaint against respondent Nos. 1 to 7 herein, alleging commission of various offences, such as cheating, forgery etc. by them. The learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai, in whose court the said complaint was filed, had ordered an investigation into the matter as contemplated u/s 156(3) of the Code of Criminal Procedure. After investigation, the police reported that, there was no case for proceeding against the respondents i.e. the accused named in the complaint. The learned Magistrate, based on the report of investigation, concluded that, the dispute was of a civil nature and that, there were no ingredients of any of the offences. Holding so, he dismissed the complaint, by an order dated 18/3/2010.

2. The petitioner then approached the court of sessions, invoking its revisional jurisdiction. However, the revision was filed only on 9/9/2010. An application for condonation of delay was, therefore, filed along with the revision application. The learned Addl. Sessions Judge, before whom the revision application with the

application for condonation of delay came up for hearing, observed that no ground was made out for condoning the delay. He, therefore, dismissed the application for condonation of delay.

The petitioner being aggrieved by the said order has invoked the constitutional jurisdiction of this court, praying that the order dated 20/8/2011 passed by the Addl. Sessions Judge, refusing to condone the delay be set aside and the learned Addl. Sessions Judge, be directed to decide the revision application in accordance with law and on merits.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent Nos. 1 to 7.

4. Counter affidavit filed by the respondent No. 1 on behalf of the other respondents except the State, is taken on record.

5. The revision application presented to the sessions court was delayed by 6(sic) days. The only question that arises is whether the order passed by the Addl. Sessions Judge, refusing to condone the delay, suffers from an error apparent on the face of the record and whether non-intervention in the matter might result in miscarriage of justice.

6. The petitioner had given the following reasons for the delay that had been caused in presenting the revision application to the sessions court. The first reason given by him was that the complaint had been lodged on behalf of his mother, who is aged about 90 years. The petitioner had also stated that, his mother was bed ridden and he was required to take care of her. In this regard, the learned Addl. Sessions Judge, observed that since the revision application was required to be signed by the petitioner, who was acting as a constituted attorney of his mother, the age and sickness of the mother was not relevant. The approach of the learned Addl. Sessions Judge, does not appear to be correct, as the age of mother and her bad health condition was put forth by the petitioner, not for indicating why she could not file a revision application in time, but as a ground for his being unable to present the revision application in time.

7. As regards the sickness of the mother and the claim of the petitioner that, he had to take her care, the learned Addl. Sessions Judge observed that the petition not produced any documents showing th(sic)f his mother and her illness, as also the (sic) that was being given to her. This application also not proper, in my opinion, inasmuch as that the petitioner's mother is of 90 years, was not in dispute. The age of the mother of the petitioner is such that, the statement of the petitioner on oath, that, she was suffering from ailments and that, he was required to look after her, was sufficient to accept such a claim particularly when there was no material to contradict this claim.

8. The petitioner had also submitted that his advocate was out of station due to summer vacation and that also resulted in delay in filing the revision application. In this regard, the learned Addl. Sessions Judge, observed that, if the advocate

was practicing within the jurisdiction of the trial court then the claim of the petitioner that his advocate was out of station due to summer vacation had no value for delay condonation. This view also does not seem to be proper. Non availability of the advocate for some period could be a ground, in a given case, for causing the delay and ought to have been considered in proper perspective by the learned Addl. Sessions Judge.

9. On behalf of the respondent Nos. 1 to 7, there is no challenge to the contentions raised by the petitioner as to the causes of delay. What has been attempted to argue before me is that, the complaint filed by the petitioner was without any merit and that, it had been rightly dismissed. What is argued is that, the revision application has no merit. In my opinion, these contentions are not relevant while deciding whether the sessions court ought to have condoned the delay and considered the revision application on merits.

10. It is also submitted before me by the learned counsel for the respondent Nos. 1 to 7 is that, the petitioner has filed four prosecutions on the same facts against respondent Nos. 1 to 7, two of which have been dismissed and two are pending. I am afraid, this aspect is also not relevant in the context of the controversy with respect to the propriety of the order refusing to condone the delay.

11. The primary function of a court of law is to adjudicate the dispute between the parties and to advance substantial justice. The court, therefore, has to be liberal in condoning the delay. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time, a bad cause would transform into a good cause. The rules of limitation are not meant for destroying the right of parties, but only to ensure that parties do not resort to dilatory tactics. Undoubtedly, therefore, a party would be required to explain the delay satisfactorily but when some explanation which is reasonable is put forth in support of the plea for condonation of delay and when there is no material to contradict the averments made in that regard the court has to lean in favour of the condonation of delay, rather than refusing to condone the delay. The worse that can happen by condoning the delay is that some time of the court would be lost but the matter would be decided on merits and this would advance the cause of justice. The affected party certainly can be compensated by awarding costs, in such cases.

12. In my opinion, the petitioner had made out a case for condonation of delay. The learned Addl. Sessions Judge did not keep the principles governing the condonation of delay in mind. The order passed by the Addl. Sessions Judge, suffers from an error of law apparent on the face of record. It is necessary to interfere therewith in the constitutional jurisdiction of this court.

13. The Petition is allowed in terms of prayer clause (b).

14. The parties shall appear before the court of sessions on 29/4/2013.

15. In the circumstances, there shall be no order as to costs. Rule is made absolute accordingly.