

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4515 OF 2004

IN

CRIMINAL REVISION APPLN.NO. 65 OF 1997

Mahesh Kantilal Bhayani & anr. ... Applicants

versus

State of Maharashtra and anr. ... Respondents

...

Mr. P.C. Kansara, for the Applicants.

Mr. A.S. Gadkari, A.P.P., for the Respondent

State.

...

CORAM : A.M.KHANWILKAR,J.

31st January 2005

P.C.:

. Heard Counsel for the parties. This application is resisted by the Respondents essentially on two grounds. In the first place, it is contended that the averments in the application for condoning delay of almost two years are blissfully vague and no good reason or

sufficient cause is pointed out to show that indulgence. It is also contended that the offence in question, amongst others, is one under the Prevention of Corruption Act and if the Court was to restore the revision application to the file to its original number, it should be made clear that no interim relief will operate in favour of the Applicants because of the restoration of revision application. This is necessary in view of the exposition of the Apex Court in the case of Satya Narayan Sharma v. State of Rajasthan, reported in A.I.R. 2001 S.C. 2856.

2. After going through the application, there is substance in the argument of the Respondents that no sufficient cause has been made out so as to explain delay of over two years except saying that the matter remained unattended because of the Advocate's oversight. Be that as it may, as that ground is taken on affidavit by the Applicants and Advocate's mistake cannot be the basis to punish the Applicants, by way of indulgence order dismissing the revision application for non-prosecution deserves to be

recalled and the revision application restored to file to its original number. However, as rightly argued by the Respondents, in view of the decision of the Apex Court referred to above, it needs to be clarified that no stay will operate in favour of the Applicants, resotration of the revision application notwithstanding. Accordingly, this application succeeds on the above basis and on condition that the Applicants to pay costs quantified at Rs.1,000/- (Rupees one thousand only) to the High Court Legal Services Committee within one week from today. Ordered accordingly.

(A.M.KHANWILKAR,J.)