

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**CIVIL APPLICATION NO.228 OF 2020**  
**IN**  
**REVIEW APPLICATION (STAMP) NO. 34629 OF 2019**

DNYANESHWAR VISHWANATH BORADE  
**VERSUS**  
SHRI SAIBABA SANSTHA VISHWASTHA VYAVSTHA  
AT POST SHIRDI, AHMEDNAGAR

...  
Advocate for Applicant : Mr. Warunjikar, h/f Mr. R. A. Tambe.

Advocate for Respondent : Mr. S. R. Chowkidar.  
...

CORAM : **T. V. NALAWADE &  
MANGESH S. PATIL, JJ.**  
DATE : 31<sup>st</sup> August, 2020.

**ORDER**: (Per T. V. Nalawade, J.)

. The application is filed for condonation of delay of 265 days caused in filing review application. The Petitioner from Writ Petition No.708 of 2015 wants to seek review of the judgment delivered by this Court in the writ petition on 15<sup>th</sup> January, 2019. The proceeding for condonation of delay came to be filed in this Court on 4<sup>th</sup> November, 2019. It was submitted during hearing by the learned counsel for Applicant that after the disposal of Special Leave to Appeal No.8377 of 2019 on 3<sup>rd</sup> July, 2019, which was filed to challenge the

decision of writ petition, this proceeding came to be filed and as liberty was given by the Supreme Court to file review proceeding, it needs to be presumed that there was sufficient cause for delay caused in filing the proceeding. The learned counsel was asked to argue the matter and to make out the case for sufficient cause and he was asked to show that there is some arguable case in review proceeding.

2           In the application filed for condonation of delay, it is the contention of the Applicant that on 15<sup>th</sup> January, 2019, the present Applicant got decision of acquittal in Sessions Case No.81 of 2012, which was filed against him in respect of same incident and so there was no opportunity to him to submit in Writ Petition No.708 of 2015 that he had got acquittal and so, the circumstance of acquittal can be considered as a ground for challenging the order of termination made against him in the departmental enquiry. It is contended that he had filed Special Leave to Appeal No.8377 of 2019 in Supreme Court and that proceeding was withdrawn as there was circumstance like acquittal of the Applicant in the criminal proceeding and the Supreme Court granted liberty to him to file review proceeding. It is his contention that his financial condition was weak as he had lost job, his mother was not keeping well and her condition was serious and he required some time to collect relevant documents and due to that delay is caused in filing the proceeding.

3           It is already mentioned that the present proceeding was filed on 4<sup>th</sup> November, 2019. Even if it is presumed that the Applicant thought after filing of SLP that it would be proper to file review proceeding, he ought to have taken steps immediately after the disposal of the SLP, which was filed in Supreme Court. The said proceeding came to be disposed of on 3<sup>rd</sup> July, 2019, but the present proceeding came to be filed on 4<sup>th</sup> November, 2019. If the circumstance that he got acquittal on 15<sup>th</sup> January, 2019 was relevant according to Applicant, he ought to have directly come to this Court and he could have filed review proceeding. Instead of doing that, he filed SLP in the Supreme Court. Thus, it cannot be said that time started to run for him on 3<sup>rd</sup> July, 2019. He could afford to engage counsel in Supreme Court and go to Supreme Court to challenge the decision of this Court and so it cannot be believed that he had no resources to file the present proceeding. There is virtually no record in respect of the so-called illness of his mother. Due to these circumstances, this Court holds that no sufficient cause is shown by the Applicant in respect of delay of 265 days caused in filing the proceeding. On this ground itself, the proceeding needs to be dismissed.

4           The learned counsel for Applicant was expected to show that the Applicant has some arguable case in the main matter, review proceeding. The judgment delivered by this Court in the aforesaid writ petition on 15<sup>th</sup> January, 2019 does not show that filing of criminal case was considered as a circumstance against the present Applicant for giving decision against him in departmental enquiry. There is no whisper about the pendency of that case in the decision given by this Court and in the departmental enquiry proceeding. The standard of proof in criminal case is different and prosecution is required to prove the case beyond all reasonable doubts. Sessions case was filed for offence punishable under Section 304 of the Indian Penal Code and so, prosecution was required to establish either the intention or knowledge as mentioned in Section 304 of the Indian Penal Code. In the departmental enquiry only the principles of natural justice are required to be followed and if they are followed then this Court is not expected to lightly interfere in the order passed in departmental enquiry. That point is considered by this Court and there is no dispute that the principles of natural justice were followed. This Court has considered the relevant material, which was available before the enquiring officer. One young boy lost life due to dereliction in duty of the present Applicant. For departmental enquiry, it was not only negligence and it was something more than that. These days, the approach of some doctors working in the Government hospitals and

Trust hospitals is such that they do not care for the life of poor persons. These hospitals are meant mainly for poor persons. If such doctors do not show devotion in their duty and they act in this way, they cannot be spared as life of poor persons is more important than the service of such persons. Unless such approach is taken by the employer and also the Court, the conduct of the doctors will not improve. This Court holds that there is no arguable case in the review proceeding also for the Applicant. In the result, the application stands rejected.

*ndm*

[ MANGESH S. PATIL, J. ]

[ T. V. NALAWADE, J. ]