

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl LP(D) No. 7/2023

CrlM No. 166/2023

Union Territory of Jammu and Kashmir
Through Sub-Divisional Police Officer (City)
Jammu

....Petitioner(s)/Appellant(s)

Through :- Mr. Amit Gupta, AAG

V/s

1. Nawaf Jan S/o Nawab Jan R/o Kami Manglam District Palkad Kerala, State Kerala; Respondent(s)
2. Ahmed Ajmal Roshan S/o Hanif R/o Kaser Kot, Tehsil & District Kaser Kot, State Kerala;
3. Javid Iqbal S/o Alem Hussain R/o Sarola, Tehsil Manjakote, District Rajouri;
4. Mohd Farooq S/o Aleem Husain R/o Sarola, Tehsil Manjakote, District Rajouri;
5. Nissar Hussain S/o Munir Hussain Shah, R/o Gursai, Tehsil Mendhar, District Poonch;
6. Kouser Hussain Shah S/o Manzoor Hussain Shah, Daily Wager PHE Employee Village Gursahi, Tehsil Mendhar, District Poonch;
7. Majid S/o Mohd. Rashid R/o Gursahi, Tehsil Mendhar, District Poonch

Through :- Mr. S.K. Rao, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER
15.12.2023

Tashi Rabstan, J:**CrlM No. 166/2023 (Delay condonation application)**

1. The instant application has been filed by the applicant-UT seeking condonation of delay of 132 days in filing the accompanying acquittal appeal against the order dated 25.07.2022 passed by the court of learned Principal Sessions Judge, Jammu in case File No. 37/Special Challan titled "*State vs. Nawaf Jan & Ors.*", whereby the respondent Nos. 1 to 5 were acquitted from the charges leveled and the respondent Nos. 6 and 7, who have been declared

absconders, until they are arrested and brought to justice, the record of the case was directed to remain with records.

2. It is averred in the application that the appellant on receipt of the copy of the judgment from the trial court immediately called for the record of the case and the matter was examined and processed at different levels and the record was sent for the opinion of the Law Department; that the impugned judgment was forwarded to the Department of Law, Justice and Parliamentary Affairs, Govt. of Jammu and Kashmir, Jammu for granting sanction to file the appeal and accordingly, sanction was granted by the Department vide Govt. Order dated 22.09.2022. Further averred that the appeal was prepared after the file was received from the concerned Police Station and then drafted, sent for vetting and signatures, attestation etc.; that in order to seek instructions for filing the appeal and verification of documents and preparing the appeal as well as because the approval for challenging the impugned judgment involved correspondences and liaison between various authorities there was delay in filing the appeal. It is averred that the appeal involves very important question of facts and law and deserves to be decided on merits in the light of sufficient evidence. Lastly, it is averred that the law is well established that the law of limitation should be liberally construed to do the substantial justice and when the technicalities and the substantial justice are pitted against each other, the cause of substantial justice must prevail in the interest of justice.

3. In the objections filed by the non-applicants/respondents it is contended that no sufficient reason or ground has been submitted by the applicant to condone the huge delay; that the impugned judgment has been passed on 25.07.2022 and the sanction as per the admission of the appellant was granted on 22.09.2022, i.e., after 61 days and despite this the appellant has failed

to prefer the appeal within the stipulated period of 90 days, that too without mentioning the delay occasioned in filing the appeal. Lastly, it is contended that in case the application is not dismissed it is the respondents who being innocent shall suffer an irreparable loss which will not be compensated later.

4. In support of the case, learned counsel for the applicant has submitted that the delay caused in this case is not deliberate or intentional but incidental as the delay is caused on account of the departmental procedures involved in for filing the appeal. It is also submitted that matters relating to the Government are required to be considered at various levels and then only a decision is taken to file the appeal. The process of referring the particular file from one department to another is time consuming and decisions have to be taken collectively and hence, the delay deserves to be condoned.

5. On the other hand, learned counsel for the respondent has shown strong reservations in case the delay is condoned and submitted that delay caused in approaching the court is huge, unexplained and the reasons given for delay are nothing but charade.

6. Heard learned counsel for the parties.

7. The averments made in the application clearly reveal that the applicant/appellant was not serious in filing the appeal as the impugned judgment has been passed on 25.07.2022 and sanction was granted by the Department vide Govt. Order dated 22.09.2022, i.e., after 61 days and the appeal has been filed on 03.02.2023, i.e., after more than four months. Also, the judgment has been passed after hearing learned counsel for both the parties and not in absence of learned counsel for the respondent/appellant herein, but the appellant has not bothered to file the appeal in due time. The appellant-UT, for instance, has given reasons which only show that they have proceeded in the

matter in a perfunctory manner and excessively adhered to the formalities. No cogent and plausible grounds have been taken in the application which would entail delay in filing the appeal and the application has been drafted in a very casual and vague manner.

8. It is trite that delay in filing appeal after the statutory period of limitation prescribed cannot be condoned as a matter of course. The party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. Merely saying that the delay was on account of procedural aspect, is not a sufficient cause to condone the delay.

9. Hon'ble the Supreme Court while dismissing *SLP (Civil) Diary No(s).19846/2020* titled as *Union of India Vs. Central Tibetan Schools Admin & Ors.*, on 04.02.2021 on account of delay observed as under:-

“We have repeatedly being counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is

nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No. 22605/2020 decided on 11.01.2021].....”.

10. Having regard to above referred judgment, it suggests that the applicant-UT has perceived delay as a non serious matter and its lackadaisical tendency is exhibited by its nonchalant manner in which the appellant has pursued the matter and allowed the file to move from table to table for months together.

11. In view of the facts and circumstances of the case, observations made hereinabove and the settled law position, we are not satisfied with the explanation given by the applicant/UT for condoning the delay. The application seeking condonation of delay is dismissed.

12. As a result thereof, the application seeking leave to file acquittal appeal i.e. Crl LP(D) No. 7/2023 is declined and the accompanying acquittal appeal is also dismissed.

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Jammu:
15.12.2023
Pawan Angotra

Whether the order is speaking? : Yes/No
Whether the order is reportable? : Yes/No