

GAHC010178622018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(CrI.)/622/2018

CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BRANCH, SHILLONG, MEGHALAYA 793001,
REPRESENTED BY HEAD OF BRANCH.

VERSUS

SMT. VAHLHAI DOUNGEL
THE THEN BLOCK DEVELOPMENT OFFICER, SANGABAR, DEVELOPMENT
BLOCK, N.C. HILLS, ASSAM.

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : MR Z KAMAR

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 14.05.2024

Heard Mr. M. Haloi, learned Special Public Prosecutor for the applicant/appellant CBI and also heard Mr. Z Kamar, learned Senior Counsel, assisted by Mr. S.J. Choudhury, learned counsel for the respondent/opposite party.

2. This application, under section 5 of the Limitation Act is preferred by the applicant CBI for condonation of delay of 206 days in preferring the connected Criminal Leave Petition and the Criminal Appeal, against the judgment and order dated 31/10/2017 passed by the learned Special Judge, CBI, Addl. Court No.3, Chandmari, Guwahati in Special Case No. 09/2013.

3. The respondent/opposite party has entered appearance and submitted written objection. It is stated that there was certainly laches and negligence on the part of the officers of the applicant in taking decision in preferring appeal against acquittal and in view of the decisions of Hon'ble Supreme Court in **State of Nagaland vs. Lipok Ao and Others**, reported in **(2005) 3 SCC 572**; **Pundlik Jalan Patil (Dead) by LRS vs. Executive Engineer, Jalgaon Medium Project and Another**, reported in **(2008) 17 SCC 448**; and in view of the decisions of this Court in **State of Manipur vs. Chingsubam Rajeswar Singh**, reported in **2013(2) GLT 179**, without proof by sufficient cause being shown and if there is evidence of neglect in preferring appeal and on cryptic and vague reason the discretion to condon delay cannot be applied. The equitable relief cannot be granted on a stale claim. Therefore, it is contended to dismiss the same.

4. Mr. Haloi, the learned Special Public Prosecutor submits that the respondent/opposite party here in this petition stood trial in Special Case No. Case No. 09/2013, under section 120B/420/468/471/409 IPC read with section 13(2)/13(1)(c)&(d) of Prevention of Corruption(PC) Act for fraudulently and dishonestly misappropriating a sum of Rs. 5,47,684/

without execution of work at the site while she was working as Block Development Officer(BDO) in Sangbar Development Block, N.C. Hills, Assam. Mr. Haloi further submits that in the said case vide impugned judgment and order dated 31/10/2017, the learned Special Judge, CBI, Addl. Court No.3, Chandmari, Guwahati had acquitted her. Mr. Haloi further submits that against the said judgment and order, the applicant CBI decided to prefer an appeal and therefore, filed the Leave for Appeal petition with connected Criminal Appeal.

4. Mr. Haloi, further submits that in the process of filing the leave petition for appeal and the Connected Criminal Appeal, delay of 206 days occurred. Referring to the statement and averment made in the para No.2 of the petition Mr. Haloi submits that though the judgment was delivered on 31.10.2017, the certified copy of judgment and order was received by the applicant on 02.11.2017 and the Criminal Leave Petition and the Appeal was filed on 27.07.2018. Mr. Haloi also submits that the delay in filing the leave petition and the Appeal was not intentional rather it was circumstantial and it mainly occurred due to the procedure of obtaining approval from the Ministry of Personnel and Training, AVD-II(B), Govt. of India. Mr. Haloi further submits that besides, examination of the matter by the Law Officer of CBI, Branch Head, Sr. P.P. and Head of Zone (NE) and also by the Director of CBI, approval of the Ministry of Law and Justice is also required and in obtaining such approval the delay of 206 days occurred i.e. from 31.10.2017 till 27.07.2018, the sequence of event leading to delay is explained in the paragraph No.2. Mr. Haloi also submits that there is sufficient merit in the appeal and the applicant will be succeeded in establishing the same during hearing and unless the delay is

condoned grave prejudice will be caused to the applicant and therefore, Mr. Haloi contended to allow this petition.

5. On the other hand, Mr. Kamar has vehemently opposed the petition. Referring to the cause title and prayed portion of the petition Mr. Kamar submits that the applicant is not sure as to the nature of the petition to be filed. Mr. Kamar also submits that the application is not maintainable and the applicant sit over the matter for nine month and the delay is inordinate and though an endeavour was made to explain the delay on day to day basis yet the explanation so forthcoming is not satisfactory. Mr. Kamar has referred to a decision of Hon'ble Supreme Court in **Union of India vs. Jitendra** reported in **(2021) 10 SCC 789** to contend that merely shuffling a File from one table to the another would no more be sufficient reason while the same ought to have been dealt with in the context of technology now available. Mr. Kamar, therefore, contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also I have carefully gone through the decision so referred by Mr. Kamar.

7. It appears that while the judgment was delivered on 31.10.2017, the certified copy of judgment and order was received by the applicant on 02.11.2017 and the leave petition and the Appeal was filed on 27.07.2018. In between delay of 206 days occurred. It also appears that in the applicant's organization, there is a requirement of obtaining approval from different authorities, right from the Law Officer of CBI,

Branch Head, Sr. P.P. and Head of Zone (NE) and also by the Director of CBI, approval of the Ministry of Law and Justice and also from the Ministry of Personnel and Training, AVD-II(B), Govt. of India. And indisputably, the said offices spread over in different places, from Guwahati to New Delhi. The sequence of events has been narrated in date wise so as to explain the delay. And it appears that sufficient cause is being shown here in this case.

8. While dealing with the principle of condonation of delay Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag v. Mst. Katiji** reported in **(1987) 2 SCC 107**, has held as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 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 days 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State, which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos,

delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

9. Again in the case of **N. Balakrishnan v. M. Krishnamurthy**, reported in **(1998) 7 SCC 123**, Hon'ble Supreme Court has held as under:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10.

11. Rules of limitation are not meant to destroy the right of

parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

10. In the case in hand having examined the ground of delay in the light of the principle laid down in the cases discussed herein above, this court is of the view that the delay so occurred in filing the Leave Petition and connected Appeal is not intentional rather the same appears to be circumstantial. To the considered opinion of this court sufficient cause has been shown for the delay of 206 days in filing the Leave petition and the Appeal. There is no deliberate design and dilatory tactics on the part of the applicant in delayed filing of the Leave petition and the Appeal. And as such the matter is required to be heard on merit.

11. The submission of Mr. Kamar received due consideration of this court. Also I have gone through the decision referred by him. Also I have gone through the case laws, which the learned counsel for the respondent/ opposite party has relied upon in the objection petition. But, in view of the discussion made herein above and consequent finding so arrived at, I am unable record concurrence to his submission. And the ratio, laid down in the decision, so referred by him, also would not advance his argument, as in the said case; there was delay of 607 days in filing appeal against an order of granting bail by High Court, which was found to be inordinate by the Hon'ble Supreme Court. Also, I have gone through the other case laws relied upon by the respondent/opposite party in the objection petition and I find that in the given factual scenario, the ratios laid down in the said cases would not advance the case of the respondent as herein this case the sequence of events leading to the delay of 206 days has been sufficiently explained and the same appears to be bonafide one. It is, however, a fact that some discrepancies in the cause title and in the prayer portion of the petition have been noticed.

But, from the submission of Mr. Haloi, it becomes loud and clear that the petition in connection with which this interlocutory application is filed is leave petition for preferring an appeal and also the appeal.

12. In the result, I find merit in the application and accordingly, the same stands **allowed**. Delay of 206 days in filing the connected Leave Petition and Appeal stands condoned. In view of condonation of delay, now the registry shall register the Leave petition and list the same before the court.

JUDGE

Comparing Assistant