



2024:UHC:8087-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

JUSTICE SHRI MANOJ KUMAR TIWARI

AND

JUSTICE SHRI VIVEK BHARTI SHARMA

Special Leave to Appeal No.414 of 2024

With

Government Appeal No.267 of 2024

24 October, 2024

State Of Uttarakhand

...Applicant/appellant

Versus

Pintu @ Karan & Another

...Respondents

Present:-

Mr. K.S. Bora, learned Deputy Advocate General assisted by Mr. J.P. Kandpal, learned Brief Holder for the State-appellant.

JUDGMENT: (per Shri Vivek Bharti Sharma, J.)

Delay Condonation Application IA No.01/2024

This is delay condonation application filed by the State/appellant to condone the delay in filing the present government appeal.

2. As per the report of Registry, there is a delay of 266 days in filing the present appeal. In the delay condonation application, the ground stated for delay is that subsequent to judgment and order dated 22.09.2023 the Additional District Government Counsel (Criminal), District Nainital got applied the certified copy of the judgment and order on 25.09.2023 which was received on 25.09.2023 and



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after going through the judgment the learned Additional District Government Counsel (Criminal), District Nainital made a proposal on 27.10.2023 which was sent to the District Magistrate, District Nainital for taking necessary steps; that, the District Magistrate, Nainital thereafter sent a detailed proposal to the Principal Secretary (Law) for sanction, vide letter dated 10.11.2023; that, vide letter dated 29.11.2023 sanction was accorded to file the Government Appeal; that, the District Magistrate, vide its letter dated 04.01.2024 directed the S.S.P., Nainital to do the needful in the matter; that, thereafter the S.S.P. Nainital vide its letter dated 15.01.2024 directed the deponent for filing the government appeal; that, thereafter file was collected from the office of L.R. and after collecting documents, official pairokar contacted the office of Government Advocate on 29.07.2024 and thereafter the file was allotted to the State Law Officer on the same day i.e. 29.07.2024 to prepare the government appeal; that, thereafter on 01.08.2024 the Government counsel prepared the appeal and the deponent was called to swear the affidavit and ultimately the appeal was filed on 13.09.2024.

3. Learned State Counsel would fairly admit that though no sufficient ground is stated in the delay condonation application to condone the delay but it is settled law that the court should adopt liberal approach in condoning the delay and should not go into technicalities. He would submit that the appeal should be decided on merits in the interest of



justice.

4. In view of the submissions made above, this Court perused the record.

5. In the opinion of the Court, the delay is not sufficiently explained. There is no explanation, whatsoever, for the period between 15.01.2024 to 29.07.2024 and 01.08.2024 to 12.09.2024. The conduct and behavior of the State in preferring the present appeal appears to be very negligent and lethargic. Thus, we have no hesitation to state that in the present case delay has occurred merely because of government inefficiency. We are fortified in our view by the following decisions of Hon'ble Supreme Court.

6. In **Esha Bhattacharjee vs. Raghunathpur Nafar Academy (2013) 12 SCC 649**, Hon'ble Supreme Court after considering the extensive case law on the point of condonation of delay, has culled out the principles which need to be followed while condoning the delay. The said principles evolved by the Hon'ble Supreme Court read as under:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.



iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

7. In **Brijesh Kumar and others vs State of Haryana and others, (2014) 11 SCC 351**, Hon'ble



Apex Court relying upon the previous judgment of Esha Bhattacharjee (supra) has laid down the various principles in paragraph 10 of said judgment, which reads as under:

“10. The Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

8. In **State of Odisha (Vigilance) Vs. Purna Chandra Kandi SLP (Criminal) Diary No(s).29657/2019.**, the Hon'ble Apex Court has held that:-

"We do not find that the delay is satisfactorily explained in terms of the judgment of this Court in the case of Post Master General & Ors. Vs. Living Media India Ltd. & Anr. reported in (2012) 3 SCC 563, A mere government inefficiency cannot be a ground for condoning the delay. It is for the petitioner to put its own house in order. The special leave petition is dismissed on the ground of limitation."

9. In view of the above, we are of the firm



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opinion that the appellant/State has failed to establish cogent and sufficient reasons to condone such a huge delay, therefore, delay in filing the present appeal cannot be condoned.

10. On merits also, there is nothing which may warrant interference of this Court. It is well settled that if two reasonable views are possible on the basis of the evidence on record and one favourable to the accused has been taken by the trial court it ought not to be disturbed by the appellate court. Therefore, there is no failure of justice either if this inordinate delay is not condoned. The acquittal fortifies the innocence of the accused and therefore Courts should be slow in interfering in the finding of acquittal.

11. For the reasons recorded above, delay condonation application is dismissed. Consequently, the application seeking leave to appeal as well as the government appeal also stands dismissed, as being time barred.

(Vivek Bharti Sharma, J.)
24.10.2024

(Manoj Kumar Tiwari, A.C.J.)
24.10.2024

Rajni

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GUSAIN