

the Revision Application was converted into an appeal. The appeal ultimately came to be decided by an order dated 14/08/2012 allowing it. Against this appellate order of acquittal, the applicant intends to file an appeal and has applied to this Court seeking special leave to appeal, as contemplated under Section 378(4) of the Code of Criminal Procedure. By the present application, the applicant seeks condonation of delay in filing an application for leave to appeal, which delay is said to be of 86 days.

3. The application for condonation of delay has been vehemently opposed on behalf of the respondent Nos.1,2 and 3. It is submitted that the delay has not been properly explained and no '*sufficient cause*' for condoning the delay has been shown.

4. I have gone through the averments made in the application. The learned counsel for the applicant has drawn my attention to the averments made in paragraphs 14,15,16,17 and 18. The substance of the claim of the applicant is that he is a senior citizen aged about 67 years and, has been suffering from age related ailments and, is not keeping well. Thus, ill health of the applicant has been given as a ground resulting in delay in filing the application. In support of his claim about ill health, the applicant has submitted that he had undergone hip replacement surgery about six years ago and that, in April 2011, he had

undergone Angioplasty operation. He has annexed documents to support these claims.

5. The learned counsel for the respondents submitted that the applicant has merely shown his ailment *before* the relevant period and that, the same cannot be taken into consideration in explaining the delay that has been caused *after* 14/08/2012.

6. After carefully going through the averments, I find that averments made in the application are misconstrued by the learned counsel for the respondents. Undoubtedly, the reference is to the surgery that had taken place about six years back and also to the angioplasty operation that was done in April 2011, but what the applicant submits - by bringing these facts on record - that he does not maintain a general good health. Such a claim cannot be concluded to be incorrect.

7. The learned counsel for the respondents has relied upon a decision of the Supreme Court of India in ***Ajit Singh Thakur Singh and Anr. v. State of Gujarat***, AIR 1981 SUPREME COURT 733 in support of his contention that the '*sufficient cause*' required to be shown for condonation of delay must be referable to a period prior to the expiry of limitation. This Judgment is not relevant in the context of present case. As aforesaid, though reference has been made to the ailments suffered by the applicant prior to the point of time when the impugned order came to be

passed, the same has been made for the purpose of explaining why the application could not be filed within the prescribed period.

8. The litigation between the parties has somewhat chequered history. As aforesaid, against their conviction, the respondents had filed an application for revision. Later on, the respondents applied for converting the said revision proceedings into an appeal, which application was rejected by the Court of Sessions. The respondents thereafter approached this court and this Court directed the Court of Sessions to decide the question as to whether an appeal was maintainable, at the time of final hearing of the proceedings. Accordingly, the Sessions Court decided the proceedings in favour of the respondents by an order dated 22/04/2010, but without deciding the question of maintainability of appeal against the original order. In these circumstances, when the applicant had approached this Court by filing an appeal, this Court remanded the matter back, with certain directions, by an order dated 14/09/2011. It was directed that the Sessions Court should first decide the question as to whether appeal against the order of conviction and the sentence imposed by the Magistrate was maintainable at all and that, if the Sessions Court would find that the appeal was maintainable, it would treat the appeal as having been decided as per the order dated 22/04/2010, without examining the merits again. However, if the Sessions Court would come to the conclusion that the appeal

would not maintainable, it was directed to pass an appropriate order in view of the permission granted by this Court to convert the revision application into an appeal at the risk of accused/appellant therein.

9. It is, thereafter that the order dated 14/08/2012, which is intended to be appealed from, came to be passed.

10. The history of the litigation between the parties indicates that the applicant had been throughout prosecuting the proceedings with necessary and requisite diligence.

11. The Law of limitation is basically procedural. It is not meant to be used for defeating substantive justice. This is why, power to condone the delay has been conferred on Courts so as to enable them to do substantial Justice. This power can be exercised, if '*sufficient cause*' for the delay is shown by an applicant. The expression '*sufficient cause*' has not been defined in the Act. However, the principles as to how the expression '*sufficient cause*' (for not preferring the application within the prescribed period) should be interpreted can be gathered from the authoritative pronouncements of the Supreme Court of India, a number of which are available on this point. It is well settled that '*sufficient cause*' should be construed and interpreted in a pragmatic manner. It is also well settled that while considering

the existence or otherwise of 'sufficient cause', the Court has to keep in mind that no party ordinarily benefits by delayed filing of an appeal or application. Normally, a party who approaches a court of law with a grievance should not be deprived of hearing on merits, unless there is something to show that there was total inaction, gross negligence or want of bona fides on his part.

12. In the facts of this case, the delay does not appear to be deliberate or intentional. Once the Court comes to the conclusion that the delay is not deliberate or intentional, it has to be liberal in interpreting '*sufficient cause*'.

13. In my opinion, in this case, sufficient cause for not preferring the application within the prescribed period has been shown. I am, therefore, inclined to condone the delay.

14. The application is allowed.

15. The delay is condoned.

16. The application for leave to appeal be numbered and placed on board on **1st April 2015**.

(ABHAY M. THIPSAY J.)