

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 424 OF 2013
IN
CRIMINAL REVISION APPLICATION (STAMP) NO. 452 OF 2013**

Central Bureau of Investigation (CBI)	)	
(ACB), Tanna House, Colaba,	)	
Nathalal Parekh Marg,	)	
Mumbai 400 039	)	...Applicant
	)	(Ori. Complainant)
Versus		
1. Sonal Balubhai Chitroda	)	
w/o. Suresh B. Verma,	)	
R/o. 401, Bhavya Niketan, T.P.S III,	)	
Santacruz East, Mumbai -55	)	...(Ori. Accused No.4)
	)	
2. Suresh B. Verma,	)	
R/o. 401, Bhavya Niketan, T.P.S III,	)	
Santacruz East, Mumbai – 55	)	...(Ori. Accused No.5)
	)	
3. State of Maharashtra	)	...Respondents

Mr. Y. M. Nakhwa, Spl. P.P for the Applicant-CBI

Mr. Ganesh M. Ahuja with Mr. V. G. Talreja I/b M/s. G. D. Talreja & Associates for the Respondent Nos. 1 and 2

Ms. P. P. Shinde, A.P.P for the Respondent No.3-State

CORAM : REVATI MOHITE DERE, J.
RESERVED ON : 5th AUGUST, 2016
PRONOUNCED ON : 29th SEPTEMBER, 2016

ORDER :

1. The short question is, whether the applicant has, shown 'sufficient cause' for condoning the delay of 174 days in preferring the aforesaid revision application.

2. The applicant-CBI being aggrieved and dissatisfied with the judgment and order dated 11th January, 2013 passed by the learned Special Judge for CBI Cases, Greater Bombay in Special Case No. 58 of 2009 discharging the respondent Nos. 1 and 2 herein, has filed the aforesaid revision application alongwith the aforesaid delay condonation application. The said application seeking condonation of delay of 174 days in filing the aforesaid revision application, has been opposed to by the respondent No. 2 Suresh B. Verma, by filing an affidavit in reply. It is stated in the said affidavit in reply, that the applicant-CBI has not properly explained the delay and that no sufficient cause is shown to condone the delay. The learned Counsel for the CBI thereafter filed an additional affidavit setting out in detail, the reasons for the delay in filing the aforesaid revision application. The respondent No. 2 has also filed his reply to the said additional affidavit.

3. Learned Counsel for the applicant-CBI submitted that the applicant had given sufficient reasons for condoning the delay. He submitted that the applicant has set out in detail, both, in the application as well as in the additional affidavit, how the application moved from one department to the other, resulting in some delay in filing of the revision application. He submitted that the applicant-CBI has shown sufficient cause for condoning the delay. He urged that the delay was neither intentional nor deliberate and hence, the same ought to be condoned in the interest of justice and the revision ought to be heard on merits. He relied on certain judgments of the Apex Court in support of his submission to show that the delay must be condoned when sufficient cause is shown.

4. *Per contra*, learned Counsel for the respondent Nos. 1 and 2 vehemently opposed the application seeking condonation of delay of 174 days in filing the revision application. He submitted that no sufficient cause was shown by the applicant-CBI to condone the delay. According to the learned Counsel for the respondent Nos. 1 and 2, the application ex-facie lacks bonafides and the explanation offered was neither reasonable

nor plausible. Learned Counsel submitted that the explanation offered by the applicant, both, in the application as well as additional affidavit shows that the applicant was not diligent in pursuing the application and that no satisfactory explanation has been offered to show sufficient cause for condoning the delay. He submitted that the Central Bureau of Investigation (Crime) Manual 2005 prepared by the Government of India laying down guidelines for the CBI department and their authorities for filing cases, has not been complied with by the applicant, in letter and spirit. Learned Counsel relied on several judgments of the Apex Court and other High Courts and has also tendered a compilation of 19 judgments in support of the submission.

5. Perused the papers. The respondent Nos. 1 and 2 were prosecuted alongwith other co-accused, on a complaint lodged by the CBI ACB, Mumbai, for the alleged offences punishable under Section 420 and 120-B of the Indian Penal Code and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The allegations against the respondent Nos. 1 and 2 was that the respondent Nos. 1 and 2 in connivance with the EPF officials (A-1, A-2 and A-3) did not deduct the EPF contribution of 772

employees of respondent Nos. 1 and 2, during the period from May, 2005 to August, 2006, thereby causing evasion in terms of wages totaling Rs. 22,83,367/- and further causing wrongful loss to the Government Exchequer and corresponding wrongful gain to themselves.

6. According to the case of the prosecution, the respondent Nos. 1 and 2 were the Managing Director and Executive Director respectively, in the company, M/s. A. L. L. Services Under 1 Roof (India) Pvt. Ltd. and were responsible for making due deductions regarding EPF, ESIS and Professional Tax from the salary of the employees. It is alleged that the respondent Nos. 1 and 2 knowingly and in connivance with Shri Karkala Shivaji Arya (A-1), Regional Commissioner-1, Employees' Provident Fund Office, Bhavishya Nidhi Bhavan, Bandra (East), Mumbai, Shri Munnilal R. Yadav (A-2), then Regional Commissioner and Shri Rajanikant (A-3), Assistant Commissioner, Compliance, Employees' Provident Fund Organization, Bhavishya Nidhi Bhavan, Bandra (E), Mumbai, conspired with each other, and as such with their acts caused wrongful loss to the employees to the tune of Rs. 1,10,74,015/- as also to the Government exchequer, and corresponding wrongful gain to the establishment i.e. M/s.

A. L. L. Services Under 1 Roof (India) Pvt. Ltd. After completion of investigation, charge-sheet was filed. Thereafter, the respondent Nos. 1 and 2 filed an application seeking their discharge from the said case. The learned Special Judge, Mumbai, after hearing the parties was pleased to discharge the respondent Nos. 1 and 2 herein, from the said case vide judgment and order dated 11th January, 2013. Learned Special Judge, however, rejected the discharge application of another co-accused which has been also challenged by the said co-accused and is tagged along with the aforesaid revision application.

7. Being aggrieved by the said order, the applicant-CBI filed the aforesaid revision application alongwith an application seeking condonation of delay of 174 days in filing the said revision application.

8. A perusal of the application seeking condonation of delay and the additional affidavit filed by the applicant-CBI shows the movement of the file. The additional affidavit gives further details of the movement of the file. The reasons set out in the application and the additional affidavit discloses sufficient cause for condoning the delay. The delay caused in

filing the aforesaid Revision is also neither deliberate nor intentional nor malafide. There can be no dispute about the propositions laid down by the Apex Court in this regard, i.e. with regard to what constitutes 'sufficient cause' and when delay can be condoned. However, each case will have to be decided in the facts of that case, on the basis of the material placed before the Court.

9. Learned Counsel for the respondent Nos. 1 and 2 has relied on several judgments and there can be no dispute with regard to the same. However, the question is, whether in the facts of this case, the applicant has been able to show 'sufficient cause' to condone the delay or not ? In my opinion, the applicant has shown sufficient cause to condone the delay of 174 days in filing the aforesaid revision application. It may be noted that the Apex Court in the case of ***Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors.***¹, ***G. Ramegowda, Major & Ors. vs. Special Land Acquisition Officer, Bangalore***² and ***State of Haryana vs. Chandra Mani & Ors.***³ has observed in Para 3 as under :

1 (1987) 2 SCC 107

2 (1988) 2 SCC 142

3 (1996) 3 SCC 132

“3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) 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 day's 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 stepmotherly 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 be 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."

10. It would also be apposite to refer to the decision of the Apex Court in the case of ***G. Ramegowda, Major & Ors. vs. Special Land***

Acquisition Officer, Bangalore⁴, wherein, in Para 15, it is observed as under :

“15. In litigations to which government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.”

11. Keeping in mind the aforesaid, I find that in the facts of the present case, as noted earlier, the applicant-CBI has in its application and additional affidavit shown 'sufficient cause' for condoning the delay. There is no gross negligence or deliberate inaction or lack of bonafides which can be imputed to the applicant. It is not necessary to explain every day's delay. A certain amount of latitude is not impermissible. Procedural delay is incidental to the decision making process and is implicit in the very nature of governmental functioning. Therefore, it is necessary to give due recognition to these limitations in governmental functioning – ofcourse, within reasonable limits. It is well settled that the expression 'sufficient cause' in Section 5 of the Limitation Act must receive a liberal construction,

4 (1988) 2 SCC 142

so as to advance substantial justice. For the aforesaid reasons, in the interest of justice, the application is allowed and the delay of 174 days in filing the aforesaid revision application is condoned. Application is accordingly disposed of.

12. Criminal Revision Application to be listed for admission after four weeks.

REVATI MOHITE DERE, J.