

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 200 OF 2016
IN
STAMP NUMBER MAIN NO. 3152 OF 2016

CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BRANCH.,

... Applicant

Versus

SHRI. ATCHUT MUKUND ALORNEKAR AND
ANR.,

... Respondents

Shri Joseph Vaz, Special Public Prosecutor for the Applicant.

Shri Dhiraj U. Mirajkar, Advocate with Ms. Shilpa G. Joshi and Shri Eeshan Usapkar, Advocates for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 18th JANUARY, 2017.

ORAL ORDER:

This is an application for condonation of delay in filing an application for leave to appeal against acquittal.

2. The brief facts are that on the basis of a charge sheet filed by the applicant, the respondents were prosecuted for the

offences punishable under Section 109 of IPC read with Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, in Special Case No. 31/2013, before the learned Special Judge at Panaji. The learned Special Judge by judgment and order dated 27.07.2015 has acquitted the respondents. Feeling aggrieved, the applicant seeks to challenge the acquittal, in which, according to the applicant, there is a delay of 243 days.

3. The applicant claims that on account of administrative reasons, the judgment could not be challenged within time. It is submitted that the proposal to challenge the acquittal was required to be processed at various levels, namely, office at Goa, the Head of Zone at Mumbai and the New Delhi office of the applicant. The applicant has set out various dates showing the movement of the file in para 7 of the application. It is submitted that the limitation period in the present case, would be 180 days and having regard to the fact that the proposal was required to be considered at various hierarchical levels, the delay has occurred, which is neither intentional nor arising out of negligence and thus, deserves to be condoned.

4. Respondent no.1 has filed a reply opposing the application. At the outset, it is submitted that the period of limitation would be 90 days and not 180 days, as claimed on behalf of the applicant. It is thus, contended that the delay is of 333 days. It is submitted that the fact that the proposal was required to be considered and approved at various levels and required movement of the file, is not a sufficient ground for condoning the delay. It is submitted that the application demonstrates casual approach of the applicant and as such, the delay cannot be condoned.

5. I have heard Shri Vaz, the learned Special Public Prosecutor for the applicant and Shri Mirajkar, the learned Counsel for the respondents.

6. It is submitted by Shri Vaz, the learned Special Public Prosecutor for the applicant that the period of limitation would be governed by sub-section 4 of Section 378 of Cr.P.C., as the prosecution was instituted upon a complaint. It is submitted that thus, the period of limitation would be 180 days and not 90 days.

It is submitted that the applicant, which is a Central Level Investigating Agency handles several cases, having high stakes and it functions in a hierarchy of offices. It is submitted that the proposal for challenging acquittal has to be processed and approved at various levels, before which the application could not have been filed. It is submitted that the applicant has set out in details the various dates about the movement of the file and there is no lack of diligence on the part of the applicant in challenging the acquittal. He submits that the delay cannot be said to be intentional or arising out of negligence.

7. On the contrary, it is submitted by Shri Mirajkar, the learned Counsel for the respondents that the challenge is governed by Section 378(2) of Cr.P.C., which would attract limitation period of 90 days. It is submitted that merely because the proposal was required to be approved and considered at various levels, the applicant cannot take special privilege in the matter of condonation of delay.

On behalf of the respondents, reliance is placed on the decision of the Supreme Court in the case of **State of Uttar**

Pradesh Vs. Amar Nath Yadav, reported in **(2014) 2 SCC 422** and in the case of **Postmaster General & Others Vs. Living Media India Limited & Another**, reported in **(2012) 3 SCC 563**, in order to submit that a similar ground for condonation of delay has not been accepted by the Hon'ble Apex Court. He therefore submits that the application be dismissed.

8. I have carefully considered the rival circumstances and the submissions made and I have gone through the application and the reply filed thereto.

9. It would be first necessary to consider the period of limitation applicable in this case. It is contended on behalf of the applicant that as the prosecution was initiated on the basis of 'source information', it would be a complaint case, which would be governed by the provisions of Section 378(4) of Cr.P.C. and the period of limitation would be 180 days. The submission in my considered view cannot be accepted. The prosecution before the learned Special Judge cannot be said to be instituted upon a complaint, within the meaning of Section 378(4) of Cr.P.C. Sub-

section (2) of Section 378 of Cr.P.C. provides that if, such an order of acquittal is passed in any case, in which the offence has been investigated by the police department, under the Police Establishment Act, the Central Government under sub-section (3) can direct the Public Prosecutor to present such an appeal to the High Court, in a case where original or appellate order is passed by the Court, other than the High Court. Thus, the present case would be squarely covered by Section 378(2) of Cr.P.C. and in view of Article 114 of the Limitation Act where, the limitation provided is of 90 days. In such circumstances, I find that the extent of delay in the present case would be 333 days, as claimed on behalf of the respondents.

10. Let us now consider the prayer for condonation on merits. The only ground on which the condonation of delay is sought is that on account of administrative reasons, namely, the fact that the proposal was required to be considered and approved at various levels, namely, office at Goa, the Head of Zone at Mumbai and the Central office at New Delhi the delay has occasioned. The applicant has set out the various dates showing

the movement of the file in para 7 of the application. It can be seen that the certified copy of the impugned judgment was obtained on 04.08.2015, which was well within the period of limitation. A careful perusal of para 7 would show that the file was moved from various hierarchical offices/officers and ultimately, the present application came to be filed on 28.09.2016. The question is whether in such circumstances, it can be said that the applicant has shown 'sufficient cause' for condonation of delay. It is now well settled that existence of sufficient cause, is a *sine qua non* for the exercise of discretion to condone the delay.

11. The Hon'ble Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others**, reported in **(2013) 12 SCC 649**, after taking survey of various decisions holding the field has culled out the principles, applicable in such a case. It has been inter-alia held that a liberal view may be taken in respect of delay of short duration, however, a case of gross or inordinate/substantial delay needs to be strictly dealt with.

Although a 'acceptable latitude' may be shown in favour of State or a public body or an entity representing a collective cause, the public body cannot claim special privilege in the matter of condonation of delay. It has to be shown that the party seeking condonation of delay has acted with due diligence and/or was prevented by circumstances beyond its control, from filing the appeal within time.

12. In the case of **Postmaster General** (supra), condonation of delay was sought on similar ground, namely, the movement of the file to various offices. The Hon'ble Supreme Court has set out the movement and various dates in para 20 and has ultimately held that such an explanation would not be a sufficient cause to condone the delay. In a later decision in the case of **Amar Nath Yadav** (supra) again, the ground that the file was required to be moved from one Department to another was held not to be a sufficient ground for condonation of delay. Except the reason that the proposal was required to be processed at various levels, requiring movement of the file, there is no other reason forthcoming for the delay of 333 days, which can be said

to be of a substantial nature. In my considered view, the applicant does not make out 'sufficient cause', for condonation of delay.

In the result, the application is dismissed.

C. V. BHADANG, J.

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