

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.836 OF 2015

The State of Maharashtra ... **Applicant**

V/s.

Rajan @ Rajendra Namdeo Kachi ... **Respondent**

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Mr.Ameet Palkar, APP for th Applicant/State.

Ms.Kethi Gadkari i/b. D.S.Patil, Advocate for the Respondent
No.1.

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CORAM : A.M.BADAR J.

DATED : 3rd APRIL 2017.

P.C. :

1 This is an application for condonation of delay in filing an application for leave to challenge Judgment and Order of acquittal of the respondent of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned Additional Public Prosecutor appearing for the State as well as the learned Advocate appearing for the respondent.

3 The application for condonation of delay is opposed by filing affidavit by denying the reasons stated by the State for seeking condonation of delay. The learned Advocate for the respondent argued that the application for condonation of delay itself shows that proposal was belatedly moved to the Law and Judiciary Department of the State and the resolution of the Law and Judiciary Department authorizing the Public Prosecutor to lodge an appeal is not annexed with the application. It is further argued that from the application itself, it is seen that the office of Public Prosecutor received case papers within period of limitation, but still the application is filed belatedly accompanying by instant application for condonation of delay.

4 I have considered the submissions so advanced and perused the application as well as reply thereof filed by the respondent. Offences alleged are punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The delay sought to be condoned is only of seven days. True it is that quantum of delay is not material and what is material whether it has shown that there was sufficient cause in not filing the appeal or application within limitation. At the same time, in the matter of **Collector, Land Acquisition Anantnag & Anr. v. Mst.Katiji & Ors.** reported in AIR 1987 SC 1353, the Honourable Apex Court have given following guidelines for condonation of delay :

“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.”

5 In this view of the matter, the delay of seven days in preferring the application for leave to appeal is condoned.

6 The application is disposed of accordingly.

(A.M.BADAR J.)