

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.690 OF 2013

CENTRAL BUREAU OF INVESTIGATION)...APPLICANT

V/s.

SUDHAKAR D. PANDEY & ORS.)...RESPONDENTS

Ms.Rebecca Gonsalvez, Advocate for the Applicant.

Mr.A.P.Shah i/b. Mr.V.J.Bhanushali, Advocate for Respondent No.1.

Mr.Harshad Shingnapurkar i/b. Mr.A.S.Deshmukh, Advocate for Respondent Nos.3 and 5.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th FEBRUARY 2017.

P.C. :

1 The learned advocate for the applicant prays for effecting amendment. The amendment be effected forthwith.

2 This is an application for condonation of delay of 237 days in filing an application for leave to appeal for challenging acquittal of respondents / accused for offences punishable under Sections 120A and 420 of the IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

3 Heard the learned advocate appearing for the applicant as well as the learned advocate appearing for respondents. On behalf of the applicant it is contended that in complying with official formalities, the delay in filing an application for leave to appeal has occasioned and the same is bonafide. As against this, the learned counsel appearing for respondents by placing reliance on the judgment of Hon'ble Apex Court in the matter of **Office of The Chief Post Master General and Ors. vs. Living Media India Ltd. and Anr.**¹ has contended that there is no bonafide cause or reason for condoning the delay which is inordinate. It is argued that the State authorities cannot be given a different treatment while condoning the delay.

1 AIR 2012 SC 1506

4 I have carefully considered the rival submissions and perused the reasons stated in the application for condonation of delay. The application is on affidavit and I see no reason to disbelieve the reasons stated in the application. In the matter of Collector Land Acquisition Anantnag and Another vs. Mst.Katiji and Ors.², the Hon'ble Supreme Court had an occasion to consider the factors which should weigh the mind of court while condoning the delay. Those read thus :

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

² 1987 AIR 1353

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 the case in hand, the charge was for serious offences such as punishable under Sections 120B and 420 of the IPC and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. By condoning the delay, what will happen ultimately is decision on merit of the matter. Hence the following order :

- i) The application is allowed.
- ii) Delay in lodging the application for leave to appeal is condoned.
- iii) Put up the application for leave to appeal for Admission on **15th March 2017**.

(A. M. BADAR, J.)