

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.965 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC'), is filed by the unsuccessful petitioner-appellant-complainant assailing the orders, dated 27.12.2016, of the learned Additional Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, passed in CrI.MP.No.191 of 2016.

2. I have heard the submissions of *Sri V.V. Raghavan*, learned counsel for the petitioner, and of *Sri R.K.G. Bhatia*, learned counsel for the 1st respondent. I have perused the material record.

3. The facts which lead to the filing of this revision case by the petitioner [hereinafter, 'the complainant'], in brief, are as follows: - 'The case of the complainant in C.C.No.81 of 2015 filed against the 1st respondent-accused (hereinafter, 'the accused') for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, was dismissed and the accused was acquitted *vide* judgment, dated 02.05.2015, of the learned III Special Magistrate, Kukatpally at Miyapur. Therefore, the complainant preferred an appeal [CrI.A(SR).No.348 of 2016] before the Court of the learned Additional Metropolitan Sessions Judge, Cyberabad at L.B. Nagar. As there was a delay of 215 days in filing the said appeal, the complainant filed the afore-said Miscellaneous Petition for condonation of the said delay. The same was resisted by the accused. On merits and by the order impugned in this revision, the learned Additional Metropolitan Sessions Judge dismissed the petition and refused to condone the delay and consequently rejected the unregistered appeal of the complainant. Aggrieved thereof, the complainant preferred this revision.'

4. The case of the complainant in support of the request for condonation of delay, in brief, is as follows:

He has undergone open heart surgery at Usha Mullapudi Cardiac Centre. Certain complications developed subsequent to the surgery and hence, the complainant is not keeping well. Because of the post surgery complications, he took rest on Doctor's advice. For this reason, he could not contact his counsel and prefer the appeal within the time allowed under law. A certificate issued by the said hospital is also filed along with the petition. He was informed that the appeal ought to be filed within sixty days from the date of the judgment of the trial Court. The delay is neither due to wilful nor wanton reasons. The delay occasioned only for the reasons stated by the complainant. If the delay is not condoned and the appeal is not entertained, the complainant suffers serious and irreparable loss. He has got fair chances of success in the appeal.

5. Per contra, the case of the accused is this:

The material allegations in the affidavit filed in support of the petition are false. The limitation for filing the appeal is only thirty days. The judgment was pronounced on 02.05.2015. The copy of the judgment was delivered on 07.05.2015. The appeal was filed on 29.01.2016. Therefore, the delay is 241 days and not 215 days as being claimed by the complainant. The copies of the material papers i.e., the petition filed for condonation of delay and the proposed appeal grounds are not served on the accused despite the directions of the Court below. The allegations in the affidavit are vague. There is no explanation for day to day delay. The petition is filed in a mechanical and casual manner and on the basis of invented grounds. The said criminal appeal, viz., CrI.A(SR). No.348 of 2016 is filed as a counter blast to the suit, OS.No.1259 of 2015, on the file of the Court of the learned IX Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, filed by the accused against

the complainant for compensation for malicious prosecution. Hence, the petition is liable to be dismissed.

6. Learned counsel for the complainant while reiterating the case of the complainant would submit as follows: - 'The appeal was rejected at the threshold after dismissing the application filed for condonation of delay in preferring the appeal. Therefore, the complainant lost an opportunity to assail the judgment of the trial Court, though the complainant has got good grounds and fair chances of success in the appeal. The Court below failed to properly appreciate the facts. The complainant clearly stated that he underwent by-pass surgery in the year 2013 and that he was under continuous treatment since then and that he was bedridden due to post surgery complications and that, therefore, he is unable to meet his counsel and seek his advise and file the appeal within the time allowed under law. The complainant by oversight could not earlier submit the medical record for the period between May, 2015 and January, 2016. The said record is now filed.'

7. Learned counsel for the accused while supporting the orders of the Court below would contend as follows: 'The complainant admittedly underwent surgery in the year 2013; whereas, the judgment in the calendar case was pronounced in May, 2015. Therefore, the surgery and post surgery complications are not sufficient grounds for condonation of delay in preferring the appeal against the judgment, dated 02.05.2015, in the said CC. The complainant only filed medical certificate dated 01.06.2015. The Court below also observed that the medical record filed before it discloses that the tests or examinations done are casual and that after the medical tests no abnormality was found. The circumstances stated by the complainant did not prevent him from preferring an appeal within the time allowed under law as the judgment was pronounced several months after his alleged sickness. The explanation for the delay is invented and is not true.'

8. It is well settled principle that expression 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice and what constitutes sufficient cause always depends on the facts and circumstances of a particular case. Hence, the application need not be rejected merely on the ground of inordinate delay, but the test shall be whether sufficient cause is made out for the delay.

9. Before proceeding further, it is apt to note the following settled propositions on the settled legal aspects regarding condonation of delay:

'The statutory provision mandates that while considering the applications for condonation of delay, the applicants are required to show sufficient cause for condonation of such delay. Condonation of delay is a matter of discretion of the Court. The words 'sufficient cause' under Section 5 of the Limitation Act should receive liberal construction so as to achieve substantial justice. However while condoning the delay; the Court should not forget the opposite party altogether. A liberal approach is to be adopted in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the limitation Act. The concept of such a liberal approach cannot be equated with doing injustice to the other party. The court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. The discretion has to be exercised within the reasonable bounds known to the law. Whims or fancies, prejudices or predilections could not form the basis for exercising the discretionary power. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party. When an applicant makes an incorrect statement in an application seeking condonation of delay, the Court ought to refuse to condone such delay or inordinate delay. When the explanation offered is a sufficient cause for condonation of delay, but the delay that deserves to be condoned is a long delay, such delay is generally condoned by imposition of adequate costs as compensation to offset the delay in hearing and disposal of the case. Length of delay is no matter and the acceptability of the explanation is the only criterion. If there is no acceptable explanation, sometimes a delay of shorter length may also be uncondonable whereas in certain other times, the delay of a very long range can be condoned provided sufficient cause is shown.' The expression 'sufficient cause' is a cause for which the defendant could not be blamed. [Vide the decision of the Supreme Court in Parimal v. Veena¹]. In this decision, it was also held as follows: 'However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.'

¹ AIR 2011 SUPREME COURT 1150

10. Reverting to the facts of the case, the only reason assigned by the complainant in his explanation for delay is that he underwent open heart surgery in the year 2013 and that due to post surgery complications he was sick or unwell even after the surgery and that he took bed rest on the advise of the Doctor and, therefore, he could not contact his counsel and prefer the appeal within time. The medical record also supports the admitted case of the complainant that he underwent an open heart surgery, on 04.12.2013. In the medical certificate, dated 06.01.2016, styled as 'to whomsoever it may concern' it is stated that he is under care and treatment and he requires long term medication and regular follow ups from time to time. He also filed an out patient card of the period prior to 06.01.2016, wherein the date for review was mentioned as 06.01.2016. Therefore, the medical record, as rightly pointed out by the learned counsel for the complainant, supports the plea of the complainant that he was receiving treatment even long time after his surgery. Be that as it may. The judgment in the calendar case was rendered on 02.05.2015. The Appeal before the Court below was preferred with a delay of 215 days, on 29.01.2016, is not in dispute. However, the learned counsel for the accused brings to the notice of this Court that after dismissal of the Calendar Case filed by the complainant, the accused filed OS.No.1259 of 2015 against the complainant and that in that suit, on 18.11.2015, the defendant/ complainant personally appeared before the Court of the learned IX Additional Senior Civil Judge, L.B. Nagar, R.R. District, and requested for time to engage a counsel and hence, the said suit was adjourned finally to 14.12.2015 for filing vakalat and written statement of the complainant herein and that the said fact not only reflects that the complainant deliberately failed to file the appeal in time but also belies the contention of the complainant that he was taking bed rest at the relevant time. But, the further undisputed fact is that after the solitary appearance of the complainant in the said suit, the said suit was adjourned thereafter for filing the written statement of the

complainant herein and ultimately the complainant filed his written statement in the said suit, on 04.08.2016. As already noted, the appeal before the Court below with a petition for condonation of delay was filed on 29.01.2016. As already noted, length of delay is no matter and the acceptability of the explanation is the only criterion. Thus, on a careful consideration it appears that the delay can be condoned as the averments, which are sufficiently substantiated, do constitute a sufficient cause for condonation of long delay and as it appears from the facts borne out by the record that there is justification for the long delay. When the delay is not directly due to result of negligence or default or inaction of a party, such delay can be condoned. Hence, this Court finds and concludes that there is justification for the delay and the delay can be condoned in the facts and circumstances of the case.

11. It is to be noted that the learned counsel for the complainant relied upon a decision in *State of Karnataka v. Y. Moideen Kunhi*² in support of the contention that the expression 'sufficient cause' as appearing in Section 5 of the Indian Limitation Act, 1963, must receive liberal construction so as to advance substantial justice and that even when the delay was a long delay such delay can be condoned by imposing heavy terms. I have gone through the decision. The facts of the reported case show that there was a delay of more than nearly 6500 days insofar as the original order and about 300 days so far as the review petition and the property involved is a huge extent of more than five hundred acres of agricultural land. Having regard to the peculiar facts and circumstances of the case and keeping in view the important questions of law involved, the delay was condoned on payment of exemplary costs fixed at Rs. 10 lakhs and the State was directed to initiate action as available in law against every person responsible for the alleged fraud and delay in pursuing the remedies, fix responsibility and recover the amount as costs from them. This reported case was decided obviously purely on the facts of that case.

² AIR 2009 SC 2577

12. In the decision in *Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others*³, the Supreme Court having referred to the decisions and discussed the principles related to the issue pertaining to the condonation of delay culled out the broad principles and gave further following guidelines:

- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
- (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
- (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

In the cited decision, it was held that neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice. It was also held that Court must keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. In *Brijesh Kumar and others V/s State of Haryana and others*⁴ the Supreme Court held thus:

“The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

On the analysis of the facts of the instant case, this Court finds that sufficient cause was shown for condonation of the long delay and that the delay can be condoned as there is justification for the delay. Accordingly, in the facts and

³ 2014 (1) ALD 21 (SC)

⁴ 2014 (4) ALD 1 (SC)

circumstances of the case, this Court holds that the Court below is not justified in dismissing the application filed by the complainant for condonation of delay and that there is considerable merit in the revision. However, since the delay that deserves to be condoned is a long delay, such delay has to be condoned by imposition of adequate costs as compensation to offset the delay in hearing and disposal of the appeal filed by the complainant.

13. In the result, the Criminal Revision Case is allowed and the orders of the learned Additional Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, passed in CrI.MP.No.191 of 2016 are hereby set aside and as a sequel, the said M.P., is allowed subject to payment of costs of Rs.4,000/- (Rupees Four Thousands Only) by the complainant to the accused; and, accordingly the complainant is directed to either pay the said costs to the learned counsel for the accused or deposit the same to the credit of the above said C.C.No.81 of 2015 within three weeks from the date of receipt of a copy of this order; however, on failure of the complainant so to do, the said M.P., for condonation of delay shall stand dismissed and the order impugned in this revision case shall stand revived. On compliance of the said condition, the Court below shall entertain the appeal preferred by the Complainant, if it is otherwise in order, and dispose of the same on its merit in accordance with the procedure established by law.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

10.07.2017
Vjl

M. SEETHARAMA MURTI, J