

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2706 of 2017

ORDER:

The present Criminal Revision Case is preferred questioning the order dated 11.08.2017 passed in CrI.M.P.No.1310 of 2017 by the learned Metropolitan Sessions Judge, Hyderabad, dismissing the petition filed under Section 5 of the Limitation Act, 1963 (for short, 'the Act') to condone the delay of 22 days in preferring Criminal Appeal against the order dated 30.03.2017 passed in D.V.C.No.34 of 2012 by the III Metropolitan Magistrate, Hyderabad.

Heard Sri Khaja Zaiuddin, learned counsel for the revision petitioners, Ms. Pritika Duggal, learned counsel for Sri Divyank Jaiswal, learned counsel for respondent Nos.1 and 2, and the learned Additional Public Prosecutor for the State of Telangana appearing for respondent No.3.

The only ground on which the request to condone the delay was refused dismissing the application, as could be gathered from the order under challenge, has been that the extension of the period of limitation would affect the rights which have come to vest in the opposite party by efflux of time and the valuable right once accrued cannot be defeated. The learned Metropolitan Sessions Judge relied on the ruling of the Honourable Supreme Court in **Salil Dutta v. T.M and M.C. Private Ltd¹**, which was relied on by the learned counsel for the respondent before the Court below, and also the ruling of the Bombay High Court in

¹ 1993 AIR SCW 1178

Emperor v. Shiva Adar². If the view taken by the learned Metropolitan Sessions Judge is applied to every application under Section 5 of the Act, certainly, the object of enacting the provision would become redundant. In fact, way back in 1987 itself, the Honourable Apex Court in **Collector, Land Acquisition, Anantnag and another v. MST. Katiji & others**³, while explaining the expression 'sufficient cause' employed by the legislature in Section 5 of the Act, laid down the following guidelines:

- “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

² (1907) 9 BOMBLR 893

³ 1987 AIR 1353: 1987 SCR (2) 387

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.”

Thus, when the Honourable Apex Court directs the courts below to have a liberal approach in deciding an application under Section 5 of the Act, certainly, the delay of 22 days in the present case ought to have been condoned without rejecting the application. More so, when there was no fault on the part of the party, but it was on account of the fault of the Advocate to whom the file was handed over. No authority is required to substantiate the said circumstance as it is also well settled now that the party cannot be penalised on account of the omissions and commissions of the learned counsel. The order under challenge, therefore, suffers from legal infirmity and is liable to be set aside.

Hence, the present Criminal Revision Case is allowed setting aside the order under challenge condoning the delay of 22 days in preferring the Criminal Appeal as stated in the above.

Miscellaneous applications, if any pending in the revision case stand closed.

JUSTICE A.SHANKAR NARAYANA

12.12.2017

v v