

CRIMINAL APPLICATION (APPA) NO. 922 OF 2017
IN
CRIMINAL APPEAL NO. _____ OF 2017

VERSUS

Yogendra Tapeswar Tiwari and others. ... RESPONDENTS

Smt. Mugdha Chandurkar, Advocate for the applicant/appellant.
Shri J.M. Gandhi, Advocate for the respondents.

CORAM : P.N. DESHMUKH AND
M.G. GIRATKAR, JJ.
DATED : 10TH JULY, 2018.

ORAL ORDER:

By way of present application, the applicant prays for condonation of delay of 538 days in filing the present Criminal Appeal.

2. It is submitted that the applicant/appellant has filed criminal appeal before this Court challenging the judgment and order, dated 30th January, 2016 delivered by Special Judge, Kelapur, thereby acquitting the respondents/accused for the offence punishable under Section 120-B, 409 of the Indian Penal Code and under Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

3. There is delay of 538 days, in filing the instant appeal, is neither intentional nor deliberate and the same is due to official

procedure.

4. Learned Special Judge delivered the judgment on 30th January, 2016. On the same day, the applicant applied for certified copy which was delivered on 11.02.2016. After receipt of certified copy of judgment, the same was marked to the Prosecutor, CBI, Nagpur on 16.02.2016 for his comment. After the comments of Prosecutor to the Head of the Branch, CBI, Nagpur, the same were forwarded to CBI, Bhopal Zone on 07.03.2016, recommending for filing appeal against the impugned judgment.

5. The Deputy Legal Advisor, CBI, Bhopal Zone, Bhopal offered his comments on 06.06.2016, which was then sent by the Joint Director, CBI, Bhopal to Director of Prosecution, CBI, New Delhi on 14.06.2016 and thereafter to the Deputy Legal Advisor (HQ), CBI, New Delhi.

6. It is submitted that on 17.06.2016, Deputy Legal Advisor (HQ), CBI, New Delhi offered his comments and marked the file to Joint Director, CBI, Bhopal Zone, who on 21.06.2016 forwarded the file along with his comments inadvertently to CBI, ACB, Nagpur in stead of sending the same to CBI, HQ, New Delhi for approval of competent authority for filing appeal. The Branch Office at Nagpur vide letters dated 13.10.2016 and 05.01.2017 requested to obtain the approval from the competent authority in the matter.

7. Joint Director, CBI, Bhopal Zone on 13.06.2017 offered his comments and forwarded the file to Additional Director, CBI, New Delhi. On 14.06.2017, Additional Director, CBI, New Delhi again forwarded the file to Director of Prosecution, CBI, New Delhi for opinion before giving

his comment. On 14.06.2017, Director of Prosecution marked the file to Additional Legal Advisor, CBI, HQ, New Delhi who gave his opinion on 18.07.2017 and returned the file to Director of Prosecution. The Director of Prosecution, CBI, New Delhi gave his opinion on the judgment on 24.07.2017 recommending to file appeal and marked the file to Additional Director, CBI for approval.

8. It is further submitted that on 25.07.2017, Additional Director, CBI, HQ, New Delhi gave his opinion and forwarded the file to Director, CBI and competent authority for approval to file appeal. The Director, CBI has given approval for filing of appeal in this matter on 25.07.2017 and sent the file to Additional Director, CBI. On 26.07.2017, Additional Director, CBI forwarded the file to Joint Director, CBI, Bhopal Zone, which was sent to Head of Branch, CBI, ACB, Nagpur on 27.07.2017.

9. It is submitted that final order from the competent authority was received by CBI, ACB, Nagpur on 01.08.2017 and was handed over to the concerned Police Inspector/Investigating Officer of the case to prepare the draft appeal.

10. On 03.08.2017, the Police Inspector submitted draft appeal in the matter, which was vetted by the Branch Prosecutor on 08.08.2017. Thereafter on 11.08.2017, the vetted appeal was forwarded to Joint Director, CBI, Bhopal Zone, Bhopal along with enclosures including draft letter to Director (Vigilance), Department of Personnel and Training, New Delhi requesting for permission to file appeal before this Court.

11. The CBI, Bhopal Zone, Bhopal vide letter dated 21.08.2017

forwarded the proposal for permission to file appeal in the matter to Department of Personnel and Training, New Delhi. Vide letter dated 21.09.2017, approval was given by CBI to file appeal. The approval was addressed to Joint Director, CBI, Bhopal Zone, Bhopal, which was received in CBI, Bhopal Zone, Bhopal on 09.10.2017. The appeal is filed after completing necessary formalities.

12. Learned Counsel for the applicant submits that it has a good case on merit and there is likelihood to succeed in the appeal. Therefore, prayed to condone the delay of 538 days.

13. The instant applicant application is strongly opposed by the respondents. It is submitted by the learned Counsel for the respondents that the delay is not properly explained. There is no sufficient cause to condone the delay. Hence, application is liable to be dismissed.

14. Heard Smt. Mugdha Chandurkar, learned Counsel for the applicant. She has submitted that the delay is properly explained. There is sufficient cause for not filing the appeal within time. At last, prayed to condone the delay.

15. Heard Shri J.M. Gandhi, learned Counsel for the respondents. He has submitted that the delay of 538 days is not sufficiently explained. There is no sufficient cause to condone the delay. Hence, application is liable to be dismissed. In support of his submission, he has pointed out the decisions of the Hon'ble Apex Court in the cases of Balwant Singh (Dead) .v. Jagdish Singh and others (reported in 2010(6) ALL MR, 480) and Maniben Devraj Shah .v. Municipal Corporation of Brihan Mumbai (reported in 2012(5) Mh.L.J., 584).

16. From the perusal of contents of application, it is clear that the impugned was passed on 30th January, 2016. On the same day, application for certified copy was moved. Certified copy was received on 11.02.2016. Thereafter, from one office to other, correspondences were made. Legal opinion was sought from several officers. File moved from Nagpur to Bhopal to New Delhi and vice versa. Sufficient cause is shown for condonation of delay.

17. In the case of Balwant Singh (Dead) .v. Jagdish Singh and others (cited supra), their Lordships of Apex Court observed that, “for condonation of delay, for setting aside abatement filed belatedly, contention that applicants were staying away from deceased father and had no knowledge of pending appeal. Application, however, made long after applicants were informed by Counsel. Delay of two years cannot be condoned”.

18. In the present case, the delay is properly explained. After receipt of certified copy, letter for approval to file appeal sent to several offices from Nagpur to Bhopal to New Delhi and there was again correspondence between them. Therefore, there is a delay. Hence, cited decision is not helpful to the respondents.

19. In the case of Maniben Devraj Shah .v. Municipal Corporation of Brihan Mumbai (cited supra), their Lordships of Apex Court have observed as under :-

“Application for condonation of delay. Exercise of discretion by the Court. Acceptability of the explanation for the delay is the only criterion. Expression “sufficient cause” used in

section 5 is elastic enough to enable the Courts to apply the law in meaningful manner which serves the ends of justice. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

20. Learned Counsel has pointed out the decision of the Apex Court in the case of **Lanka Venkateswarlu(Dead) by LRs. .v. State of A.P. and others (reported in 2011(4) Mh.L.J., 104)**, their Lordships have observed that, “Applications for condonation of delay, Courts do not enjoy unlimited and unbridled discretionary powers. Discretion has to be exercised in a systematic manner informed by reason”.

21. In the case of **Collector, Land Acquisition, Anantnag .v. Mst. Katiji (reported in 1987 (2) SCC, 107)**, their Lordships of Apex Court have observed as under :-

“The legislature has conferred the power to condone delay by enacting section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :

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.*

22. In the present case, the applicant has explained the delay. After obtaining certified copy, CBI has moved the file from one office to other. There was some query, again file was returned from one office to other and, therefore, there is a delay. Delay is sufficiently explained. Hence, In view of the judgment of the apex Court in the case of Collector, Land Acquisition, Anantnag .v. Mst. Katiji (cited supra), delay is liable to

be condoned. We are inclined to allow the application.

23. In the result, application is allowed. Delay is condoned.

JUDGE

JUDGE

*rrg.

Rajesh
Rambhau
Ghatole

Digitally signed
by Rajesh
Rambhau
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Date: 2018.07.16
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