

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISC. APPLICATION NO. 82 OF 2019.
IN
STAMP NUMBER MAIN NO.947 OF 2019.

Central Bureau of Investigation
Anti Corruption Branch, Bambolim., ... Applicant.

Versus

Lucio Rodrigues and 6 ors. ... Respondents.

Mr. M. Amonkar, Special Public Prosecutor for the applicant.
Mr. Siddesh Shet, Advocate for respondent no.1.
Mr. C. A. Ferreira, Advocate for respondent no.2.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Reserved on:- 14th November 2019.
Pronounced on:-27th November, 2019.

ORDER

This is an application for condonation of delay filed by the Central Bureau of Investigation.

2. The Special Court had acquitted the respondents of the offences punishable under Section 120-B read with Section 420 of IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 by a judgment and order dated 29.8.2018.

3. A delay of 79 days occurred in filing the Criminal Appeal against the impugned judgment and order.

4. Heard Mr. M. Amonkar, learned Special Public Prosecutor, Mr. S. Shet, learned Counsel for the respondent no.1 and Mr. C. A. Ferreira, learned Counsel for the respondent no.2.

5. Mr. Amonkar, took me through the various development which occurred ever since the applicant had moved an application for obtaining certified copy on 29.8.2018. Copy was obtained on 15.9.2018 under the signature of the Special Judge, South Goa, Margao. An appeal ought to have been filed within 90 days i.e. latest by 15.12.2018.

6. It is contended that due to the administrative reasons there was an avoidable delay in filing the appeal. It is contended that upon receipt of certified copy of the judgment on 15.9.2018, it was placed before the Public Prosecutor for his comments within 2 days i.e. on

17.9.2018. The Prosecutor gave his comment on 28.9.2018. It took about 11 days for him to give his comment. It is submitted that there were several cases pending before many Courts in the State which required the presence of the Public Prosecutor and, therefore, 11 days delay had occurred.

7. It is contended that thereafter the Head of the Branch Office has offered his comment on 5.10.2018. Subsequently, it was forwarded to Head of Zone, CBI, Mumbai on the same day i.e. 5.10.2018. The Deputy Legal Advisor, CBI, Mumbai offered his comment on 29.11.2018. He submitted the file before the Head of Zone who offered his comment on 8.12.2018. He marked it to Director of Prosecution for its opinion on the same day. The Director of Prosecution marked the file to the Additional Legal Advisor, who gave his comment on 14.12.2018 i.e on the very next day. File was redirected to the Director of Prosecution. The Director of Prosecution added his opinion on 24.12.2018 and file was forwarded to Director, CBI for his approval which was given on 2.1.2019 to file an appeal before this Court.

8. File was thereafter redirected to Head of Zone, Mumbai. It was signed by Head of Zone on 4.1.2019 and redirected the file to the Head of the Branch, Goa. The file was meanwhile marked to Pairvi Officer on 9.1.2019 to prepare the draft appeal and Special Leave to appeal.

9. It is contended that the branch sent all the documents like FIR, Chargesheet, Depositions, Judgment and comments of DOP with approval of DCBI to file the appeal to HOZ on 9.1.2019. The HOZ sent the letter and documents to DP&T vide letter no.21/RC1(A)/2000-Goa/Mum Zone dated 16.1.2019 for obtaining formal permission of Administrative Ministry.

10. The Pairvi Officer prepared the draft appeal on 21.1.2019 and was vetted by Branch PP on 28.1.2019. The draft of condonation of delay was also prepared by PO on 30.1.2019 which was vetted by Public Prosecutor on 1.2.2019. The appeal and the application for

condonation of delay were sent to Zonal Office vide letter No.263 dated 4.2.2019 for vetting by DLA and approval by HOZ. The appeal and application for condonation of delay was sent to Government Counsel vide letter no. 268 dated 6.2.2019. The Government Counsel vetted the same on 8.2.2019.

11. The DP&T permission vide No.137/13/2019-AVD-II(B) dated 22.2.2019 alongwith advice dated 19.2.2019 for filing appeal of Ministry of Law and Justice, Department of Legal Affairs was received by CBI on 25.2.2019. The file was thereafter marked to Deputy Legal Advisor, CBI, Mumbai on 26.2.2019 who vetted the draft appeal and application for condonation of delay on 27.2.2019. The HOZ approved on the same day. It was received by the branch by email on 27.2.2019. The DP&T permission was conveyed to be sent by speed post to the CBI Goa branch. The DP&T approval vide aforesaid letter received by CBI Goa on 1.3.2019 and thereafter the appeal is filed on 5.3.2019.

12. Mr. Amonkar submits that the applicant has a good case on

merits and, therefore, delay needs to be condoned as it has been properly explained by demonstrating sufficient cause as required under Section 5 of the Limitation Act.

13. On the other hand, learned Counsel for the respondents objected the application vide affidavits in reply filed on behalf of respondent nos.1 and 4.

14. The sum and substance of the arguments of the learned Counsel for the respondents is that delay has not been properly calculated and explained by the applicant. According to Mr. Ferreira, learned Counsel for the respondent no.2, the delay was of 97 days. According to Mr. Ferreira, CBI is a premier investigating agency which ought to have filed the appeal within limitation without taking lame excuses of administrative reasons. It is a procedural lethargy. Mr. Ferreira, further submits that valuable rights have been accrued in favour of the respondents which would be jeopardized, if the delay is condoned. It is submitted that the matter is pending for more than 18 years and the

respondents have been facing agony and suffering for such a long period. Since there is no sufficient cause shown, application needs to be rejected.

15. Mr. Ferreira placed reliance on a judgment of the Karnataka High Court in case of *T. Krishnappa Vs V. Yashodha Kumar*¹ and in the case of *State of Maharashtra and others Vs Vithu Kalya Govari and others*².

16. Similar is the stand taken by the learned Counsel for the respondent no.1 in its affidavit in reply.

17. The Hon'ble Supreme Court in *Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others*³ after taking the survey of all the earlier decisions on the point of condonation of delay has culled out salient features on the principles which are applicable to an application for condonation of delay. The Hon'ble Supreme Court in paragraphs 21 and 22 observed thus:-

1 Criminal Appeal No.465 of 2014

2 2008(6) Mh. L. J. 239

3 (2013)12 SCC 649

21. *From the aforesaid authorities the principles that can broadly be culled out are:*
- i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
 - ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
 - iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
 - iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
 - v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
 - vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
 - vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
 - viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
 - ix) The conduct, behaviour and attitude of a party*

relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

- x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- 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 nonserious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters.*

(Emphasis supplied)

18. As laid down by the Supreme Court, while entertaining an application for condonation of delay, the approach of the Court should be liberal, pragmatic, justice oriented, non pedantic. Sufficient cause should be understood in their proper spirit and philosophy and purpose; regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.

19. What is more important is to see is the substantial justice which has been paramount and pivotal; the technical considerations should not be given undue and uncalled for emphasis. Clause(vi) of the principles enumerates that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

20. This is a case, which cannot be branded as a case in which there has been an inordinate delay. Had it been in ordinate, doctrine of prejudice would have been attracted. Explanation offered by the applicant is quite convincing, acceptable and bonafide. It is manifest from the tenor of the application the series of correspondence which were required to be made before an appeal to be filed.

21. In the case of ***T. Krishnappa***(supra), which was a criminal appeal under Section 378(4) of Cr.P.C., there was a delay of 196 days in preferring the appeal. Learned Single Judge of the Karnataka High Court held that reasons given by the applicant that after impugned Judgment and order he was held up in some family problems and was also suffering from viral fever because of which he could not give instructions to his counsel cannot be said to be a “sufficient cause”. It is held that said cause was inadequate which prevent him to approach the Court within limitation and, therefore, dismissed the appeal.

22. The ratio laid down by the Karnatka High Court is in view of the fact and circumstances of that case and, therefore, it cannot be a precedent to be considered while entertaining present application of the Central Bureau of Investigation, as has already been stated “sufficient cause” has been established by the CBI.

23. In the case of ***Vithu Kalya Govari and others***(supra) it was held thus:-

“The court would exercise its discretion in condoning or declining to condone delay judiciously and ensure that no serious prejudice is caused to either of the parties to the proceedings. When an appeal becomes barred by time because of negligence or default of one of the parties, valuable rights accrues to the others which normally not being taken away in a routine manner and too liberalised exercise of discretionary power. It is equally true that the period of limitation and object of prescribing periods is not intended to destroy rights but is founded on public policy fixing a life span for legal remedy for general welfare. Condonation of delay is a discretion of the Court. Length of delay per se may not be a ground for rejecting an application but if a satisfactory explanation has been furnished by the parties which can be accepted by the Court in consonance with the settled norms for exercise of such jurisdiction. The Court has to protect right of both the parties and right of onus should not be permitted to be destroyed

unjustly and contrary to law. When there is delay in invoking the remedy by the applicant a right accrues to the non-applicant which cannot be taken away in routine manner.”

24. The ratio laid down by the Supreme Court is more or less the same like as that of principles laid down by the Supreme Court in the case of ***Esha Bhattacharjee***(supra)

25. As already stated herein above, the applicant has, in minute detail, placed on record as to how the file moved at different stages in different office/s for its lawful and due course before an appeal could be filed in this Court.

26. I am convinced that the applicant has shown sufficient cause in condoning the delay, thus delay of 79 days is condoned.

27. Application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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