

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

214

**CRM-10005-2020 in/and
CRM-A-461-2020
Decided on : 27.07.2022**

State of Punjab

... Applicant

Versus

Natha Singh alias Hardev Singh alias Dev

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Abhaypal Singh Gill, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

Challenge by the State in the present application filed under Section 378 (3) Cr.P.C. is for grant of leave against the judgment of acquittal dated 18.04.2015 recorded by the Special Court, Bathinda.

The said application is barred by 1671 days in filing. The reasons given to show sufficient cause to condone the inordinate delay are sought to be justified by the counsel for the State, but we are not in agreement for the reasons which have been put forth in the application. Even though it has been pointed out that action had been taken against the delinquent official who kept the file pending with him for 7 months, but the said period is sought to be between 24.07.2019 and eventually when the appeal was put for rechecking on 05.02.2020, since it was thereafter filed on 10.02.2020.

Apart from that also the State has proceeded in a leisured manner as if it is placed at a better pedestal than the ordinary litigant and, therefore, can seek some preferential right or treatment for condoning the delay. However, the precedents as such do not support that any different formula is to be adopted in the cases of the State.

Initially, in the case of **State of Nagaland Vs. Lipok AO and others, 2005 (3) SCR 108**, a cord had been struck by the Apex Court that on account of impersonal machinery the State could be granted some leverage. However, thereafter in the case of **Office of the Chief Master General & others Vs. Living Media India Ltd. and another, (2012) 3 SCC 563** it was held that the department could not take advantage of various earlier decisions and claim differential treatment on account of impersonal machinery. Appropriate explanation had to be given and only sheer mentioning of various dates could not make out a case of sufficient cause to condone the huge delay. Relevant portion of the said judgment reads as under:-

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of

limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

Thereafter, the Apex Court in the case of **Esha Bhattacharjee Vs. managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649** has held that increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. The principles laid down in the said case read as under:-

“15. 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.

16. 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 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 present case explanation given in the application for condonation of delay would go on to show that an application under Section 311 Cr.P.C. had been filed for summoning Balwinder Singh, Balkar Singh and Sudhir Kumar as prosecution witnesses. On account of the fact that the same had been dismissed, Criminal Revision No.2852 of 2015 had been filed in this Court. Thereafter, the trial Court had decided the main case and acquitted the respondent and the criminal revision had been withdrawn on 05.09.2017 since the same had become infructuous. The file was then put up before the Law Officer with both the orders dated 18.04.2015 and 05.09.2017 and an opinion was then rendered on 28.12.2017 that it is a fit case to file an appeal. The same had been endorsed by the Advocate General's Office on 15.01.2018 and sent to the District Attorney, Bathinda on 07.02.2018, who had then written to the SSP, Bathinda on 07.03.2018. The SSP, Bathinda had written a letter on 05.04.2018 for grant of sanction and the sanction order was only obtained on 09.11.2018. It was received in the office of Advocate General on 14.11.2018 and then documents were called for vide letter dated 15.11.2018. The official of the police station visited the office of Advocate General and then the case was put up for vetting on 24.07.2019.

Thus, the reading of the dates would go on to show that the delay has occurred not at one point of time, but on several occasions.

Firstly, we are of the considered opinion that if the State was interested to

prosecute the respondent, there was no need to file the criminal revision before this Court, which was eventually dismissed as withdrawn. Thereafter, in spite of obtaining an opinion on 28.12.2017 from the Law Officer, the sanction could not be obtained till 09.11.2018 and after receiving the same, the case was put up for vetting only on 24.07.2019. Thus, now to fall back that there was delay on the part of one delinquent official for 7 months i.e. between 24.07.2019 to 05.02.2020 when the appeal was filed in February, 2020 would not make out sufficient cause to condone the inordinate delay, which has occurred prior in time as noticed above on two occasions.

Keeping in view the above reasons and keeping in mind the principles laid down by the Apex Court, we are of the considered opinion that there is no reason to condone the inordinate delay. Accordingly, both the application for condoning the delay of 1671 days and the application filed under Section 378 (3) Cr.P.C. for grant of leave are dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

July 27, 2022
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No