

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

**CRM No. 21830 of 2019 in/and
CRM-A-1396-2019 (O & M)
Date of Decision: 05.12.2022**

Poonam Mehra @ Preeti

.....Appellant(s)

Versus

Happy Vij @ Karan Vij @ Sonu and another

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. SPS Aulakh, Advocate,
for the applicant-appellant.

Mr. Manish Verma, Advocate,
for respondent No.1.

Mr. Arjun Sheoran, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed for grant of leave to appeal against the judgment of acquittal dated 17.11.2016, which is barred by 851 days in filing the same. The application has been filed by the victim who herself did not support the case of the prosecution and was declared hostile alongwith the mother. The averments made in the application for condonation of delay are that the applicant was not well versed with the legal framework and was not aware that the appeal is to be filed before the High Court. In such circumstances, delay is sought to be condoned.

The present appeal was filed on 17.05.2019 against the judgment of acquittal dated 17.11.2016. Apparently, there has been a lot of litigation *inter se* the parties in as much as it is their own case that the victim got married with the respondent-accused on 09.11.2016 during the pendency of the trial and that is the ground apparently she turned hostile on which there is an acquittal recorded.

It has been argued by counsel for the applicant-appellant that an FIR bearing No. 116 had been lodged by one Pooja on 26.04.2016 against her brother Ravi for the offence under Section 376 IPC, on account of which the issue had compromised.

It is not disputed that she has also lodged another FIR No. 245 28.06.2017 against the respondent Happy Vij, who happened to be her husband by then and against the two brother-in-laws namely Mani Vij and Arun Vij. In the said case also, there has been acquittal on 10.10.2022.

In such circumstances, we are of the considered opinion that the applicant-appellant, who claims to be not well versed with the intricacies of law cannot be given the benefit of concession of condonation of inordinate delay which has happened as she is apparently well aware of the procedure of the Courts.

Reliance can be placed upon the judgment in ***B. Madhuri Goud vs. B. Damodar Reddy, (2012) 12 SCC 693*** wherein, the Apex Court relied upon the earlier precedents in ***N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123*** that the law of limitation fixes a life span for legal remedy for redressal of the legal injury so suffered. Accordingly, it was held that a life span is fixed for each remedy as it is meant to see that the parties do not resort to dilatory tactics but seek the remedy promptly. Thus, it is accepted position of law that the law of limitation may harshly affect a particular party but it cannot be lost sight of the fact that successful litigant acquires certain rights on the basis of a judgment under challenge. Therefore, we feel that it is not a fit case as such for condoning the delay.

In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649***, the

principles laid down were that lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact and the concept of liberal approach cannot be allowed a totally unfettered free play. It was further held that the tendency to perceive delay as a non-serious matter and that it could be accepted in a nonchalant manner requires to be curbed but within legal parameters. The principles laid down read thus:-

“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.”

Reliance can be placed upon the judgments of The Apex Court in ***Office of the Chief Post Master General and others vs. Living Media India Ltd. and another, 2012 (2) SCT 269*** and ***Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation and another, (2010) 4 SCC 459***. In Chief Post Master's case, it has been held 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.”

In our considered opinion, it is not a case as such which is to be considered for grant of leave to appeal as dirty linen of the parties is not to be washed in Court and it is to be settled amongst them.

Accordingly, the present application for condonation of delay as well as the main appeal stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

05.12.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No