

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.59 OF 2023

IN

CRIMINAL APPEAL NO. 331 OF 2023-F

THOMAS COOK(INDIA) LIMITED
THR. AUTH. OFFICER IPSITA
MURANJAN APPLICANT.
VERSUS
JACK FERNANDES. RESPONDENT.

Ms. Vaishali Mahato, Advocate for the applicant.

Mr. S. Gomes Pereira, Advocate for the respondent.

CORAM: PRAKASH D. NAIK, J

DATED: 12th OCTOBER 2023

ORAL ORDER.:

1. This is an application for condonation of delay in filing appeal under Section 378(4) of the Code of Criminal Procedure challenging the judgment and order dated 29.11.2021 passed by learned Additional Sessions Judge1, North Goa at Panaji in Criminal Appeal No. 34/2020 reversing the judgment and order dated 13.1.2020 passed by the learned Judicial Magistrate, First Class, Panaji in Criminal Case No. OA/618/2015/D.
2. Respondent was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 by the trial Court

and sentenced to suffer simple imprisonment of one month and to pay compensation of Rs.4,00,000/- and Rs.10,000/- to the complainant. Sessions Court allowed the appeal preferred by the respondent and set aside the judgment of convict and acquitted the respondent.

3. Learned counsel for the applicant submitted that delay in challenging the judgment of acquittal may be condoned. Delay is not deliberate. The impugned judgment was passed on 29.11.2021. During the said period there was lockdown in Maharashtra owing to Covid-19 pandemic. In compliance of various protocol issued from time to time, the office of the applicant remained closed. Lockdown in Maharashtra gradually opened from 1.3.2022. Learned counsel representing the applicant did not inform the applicant about the judgment of acquittal. The applicant came to know about the impugned order in January 2023. The applicant thereafter approached advocate on 18.1.2023. Application for certified copy was made on 27.2.2023. Certified copy was obtained on 17.3.2023. Appeal was filed on 19.4.2023. In the event delay is not condoned grave prejudice will be caused to the applicant as respondent has been acquitted by the Sessions Court by reversing the judgment of conviction. The applicant be permitted to contest the proceedings on merits.

4. Learned Counsel for the applicant relied upon following

decisions:-

(i) Sagufa Ahmed and ors. Vs Upper Assam Plywood Products Pvt. Ltd. And ors. ¹

(ii) Aditya Khaitan and ors. Vs IL and FS Financial Services Limited²

5. Learned Advocate for the respondent submitted that delay is inordinate. The applicant has miscalculated the delay. The delay is around 514 days. The applicant has given false excuse of pandemic. Application for condonation of delay reflects lack of bonafide of the applicant inspite of grace period being available, the applicant has slept over right to prefer an appeal. Applicant has blamed the lawyer to cover up their inaction. The applicant is corporate concern and it is difficult to accept that they were not functioning during lockdown or were not aware about decision of acquittal. The applicant did not take steps to file appeal even during the period when there were not restrictions of protocol of Covid-19. The period of limitation cannot be stretched beyond the extension granted by Apex Court. If delay is inordinate the Court should have to adopt strict approach while condoning the delay.

6. Learned counsel for the respondent relied upon following decisions.

¹ (2021) 2 SCC 317

² Civil Appeal No. 6411-6418 of 2023(Arising out of SLP(C) Nos. 4789-4796 of 2021 decided on 3.10.2023.)

- (i) *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy ad others.* ³
- (ii) *Balwant Singh(Dead) Vs Jagdish Singh and ors.* ⁴
- (iii) *Vasant Vithal Gawand Vs Shantaram Tukaram Gawand since(D) by his LRS and anr.* ⁵
- (iv) *M/s Sycamore Growmore Pvt. Ltd. And ors. Vs Mr. Lourenco Fernandes since (d) thr. his legal heirs*⁶
- (v) *In Re: cognizance for extension of limitation.*⁷

7. It is settled law that which is also reflected in the decision referred to herein above that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay. The Courts are not supposed to legalise injustice but are obliged to remove injustice. Discretion to condone the delay has to be exercised judiciously based on the facts and circumstances of each case. Sufficient case cannot be liberally interpreted if negligence, in action or lack of bonafides is attributed to the party. Contesting respondents cannot disown their advocate whenever it is convenient to them even if the term “Sufficient Cause” is given liberal consideration.

8. The Apex Court in the case of ***Collector, Land Acquisition,***

³ 2013 AIR SCW 6158

⁴ 1010(6) ALL MR 480(S.C.)

⁵ 2016(2) ALL MR 235

⁶ 2022(7) ALL MR 684

⁷ MCA 21/2022 in SMP(C) No. 3/2020 decided on 10.1.2022.

Anantnag and another vs. Mst. Katiji and others, AIR1987 SC 1353 observed that legislature has conferred the power to condone delay by enacting Section 51 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. The Court emphasised on adoption of liberal approach while dealing with the application for condonation of delay as ordinarily a litigant does not stand to benefit by listing an appeal late and refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice be defeated. There shall not be a pedantic approach but doctrine that is to be kept in mind is that matter has to be dealt with in rational common sense pragmatic manner and cause of substantial justice deserves to be preferred over technical consideration. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence.

9. In the light of the principles laid down by the Court in respect to the law of limitation and condonation of delay and the factual matrix of the present case, and in the interest of justice, delay needs to be condoned. It is true that parties should refrain from blaming Advocate by contending that information about decision was not

provided to them as an excuse for not challenging the order. It cannot be said that delay was inordinate or deliberate. In the interest of justice and considering the explanation by applicant delay can be condoned. The appellants must be given an opportunity to challenge the judgment of acquittal on merits.

O R D E R

- (i) Criminal Misc. Application no. 59 of 2023 is allowed.
- (ii) Delay in preferring the appeal challenging the impugned order dated 29.11.2021 passed by the learned Additional Sessions Judge, 1, North Goa Panaji is condoned.
- (iii) Criminal Misc. Application No. 59 of 2023 stands disposed of.
- (iv) Criminal Appeal No. 331 of 2023 (Filing) be listed on 29.11.2023.

PRAKASH D NAIK, J.

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