

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.362 OF 2022

Vinay Goel & Ors.

.... Applicants

versus

The Securities and Exchange
Board of India & Anr.

.... Respondents

.....

- Mr. Prashant Trivedi i/b. Sudha Dwivedi, Advocate for Applicant.
- Ms. Anubha Rastogi a/w Ms. Rachita Padwal, Advocate for Respondent No.1 (SEBI).
- Ms. Pradnya Pawar, SEBI Officer.
- Mr. A. R.Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th JUNE, 2023

P.C. :

1. The Applicant has challenged the order dated 02/07/2022 passed below Ex.52 by the SEBI Special Court. The Applicants are the original accused in SEBI Special Case No.20 of 2015 pending before the designated Special Court under the SEBI Act, 1992. The allegations against the Applicant is that they were partners of the firm M/s. Balaji & Co. SEBI received a complaint dated 19/06/2001 from one JP Mittal stating that the

accused firm was dealing in securities as an unregistered sub-broker without obtaining the registration certificate from SEBI. The accused was informed about this by a letter dated 11/09/2001 issued by SEBI directing the accused to seek registration immediately. But no steps were taken and therefore the complaint was filed on 24/09/2002 by SEBI u/s 24 (1) of the Securities and Exchange Board of India (SEBI) Act, 1992, for violation of section 12 of the SEBI Act, the Regulation 3 of SEBI (Stock Brokers and Sub-brokers) Regulations 1992 and section 17 of the Securities Contracts (Regulation) F, 1956.

2. The initial the complaint was filed before the Magistrate and he took cognizance in this offence. Subsequently, the case was transferred to the Specially designated Court under Special Act. The Respondent No.1 SEBI realized that there was delay of 97 days in filing the complaint and therefore application for condonation of delay below Ex.52 in the said case was made. The said application was allowed. The learned Judge relied on the ratio of the judgment of Hon'ble Supreme

Court in the case of ***Sukhdev Raj Vs. State of Punjab***, as reported in ***1994 Supp (2) Supreme Court Cases 398*** and condoned the delay of 97 days in filing the complaint by making reference to section 473 of Cr.PC.

3. The said order is under challenge in this Revision Application. Learned counsel for the Applicants submitted that the application for condonation of delay was filed much belatedly i.e. in the year 2022 whereas the complaint was filed in the year 2002. The cognizance was already taken on 03/10/2002 and therefore there was inordinate delay in filing the condonation of delay application. He submitted that in such a case, after the cognizance was taken, it was impermissible to condone the delay. He relied on the judgment of Single Judge Bench of this Court in the case of ***Jethmal Himmatlal Jain & others Vs. State of Maharashtra***, as reported in ***1981 SCC Online Bom. 54***. He submitted that at this belated stage learned Judge should not have condoned the delay particularly when the cognizance was taken almost 20 years back.

4. Learned counsel for the Respondent No.1 supported the impugned order and she relied on the aforementioned Sukhdev's case.

5. I have considered these submissions. The learned Judge has referred to section 473 of Cr.P.C. which reads thus;

“473 – Extension of period of limitation in certain cases -

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, if is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do the interests of justice.”

6. The offence was punishable with imprisonment for one year and therefore period limited for filing of the complaint was for one year. The question is whether the delay could have been condoned after taking the cognizance and whether there is any bar for condoning the delay if it is subsequently realized that

there was delay in filing the complaint which is reflected from the facts of this case. In this context the order of the Hon'ble Supreme Court in Sukhdev's case answers the issues. The order reads thus :

“ORDER

The appellant has been convicted under Section 9 of the Opium Act and sentenced to three years' RI and to pay a fine of Rs.5000, in default to undergo six month' RI. He was found in possession 23 kgs of opium. In the appeal before the High Court the only question raised was that though occurrence took place on 31-5-1974 challan was filed on 29-8-1977, therefore, no cognizance could have been taken in view of Section 468 of Cr.P.C. The High Court has considered this aspect and after referring to Section 473 CrPC held that in the facts and circumstances of the case the court can take cognizance if the delay has been properly explained or that it is necessary to do so in the interest of justice. In any event in this case an application was filed for condoning the delay and also explaining the delay at later stage. According to the learned counsel for the appellant such an application was filed only

after almost at the time of conclusion of trial and before judgment was delivered. It may be noted Section 473 CrPC does not in any clear terms lay down that the application should be filed at the time filing a challan itself. The words “so to do in the interest of justice” are wide enough and the court accepted the explanation. Therefore, there are no merits in this appeal. The appeal is accordingly dismissed.”

7. In the facts of this case of the Hon’ble Supreme Court, the application for condonation of delay was filed almost at the time of conclusion of the trial and before the judgment was delivered. The Hon’ble Supreme Court observed that section 473 of Cr.P.C. does not in any clear terms lay down that the application should be filed at the time of filing the challan itself. The words ‘so to do in the interest of justice’ are wide enough.

8. The ratio of this order of the Hon’ble Supreme Court is clear enough. The Hon’ble Supreme Court has interpreted section 473 of Cr.P.C. and if laid emphasis on the words ‘so to do in the interest of justice’. In this case, though the application for condonation of delay was filed after many years, the case was

pending initially before the Magistrate and then it was transferred before the designated Special Court under SEBI. All this procedural delay could not be attributed to the Respondent No.1 SEBI. Learned counsel for the Applicants submitted that only when they took objection on the issue of limit, the SEBI filed application for condonation of delay. As mentioned, the SEBI was not responsible for the matter having been kept pending for a long period. Therefore taking recourse to the section 473 of Cr.P.C., Act relying of the order of Hon'ble Supreme Court in the Sukhdev's case, I do not see any infirmity or illegality in the order passed by the Special Court which is impugned in this application. Though, learned counsel for the Applicant has relied on the judgment of this Court in the case of Jethmal Jain (supra), the Hon'ble Supreme Court's order taking a contrary view is binding. The learned Judge was right on relying on the case of Sukhdev Raj while passing the order. With the result, the application cannot be allowed and is dismissed.

(SARANG V. KOTWAL, J.)