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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 27.07.2023
Pronounced on: 31.07.2023

+ CRL.M.C. 2462/2020

DISTRICT MAGISTRATE WEST DISTRICT
 THROUGH NEHA BANSAL

..... Petitioner

Through: Ms. Nandita Rao, ASC (CRL)
 with SI Jatin, PS Khyla & Dr.
 Aman Prasad, Nodal Officer

versus

JOSAN DIAGNOSTICS CENTRE & ORS. Respondents

Through: Mr. Arup Sinnha, Ms. Arham
 Tanvir, Advocates for R-1 and
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 Mr. Gurvinder Singh,
 Advocate for R-3 and 4

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of petitioner seeking setting aside of order dated 09.10.2019 passed by learned Additional Sessions Judge-09, Tis Hazari Court, New Delhi ('learned ASJ').



2. Background facts of the present case are that on 02.03.2016, based on an information that respondent no. 1 clinic, located in Rajouri Garden, Delhi, had been carrying out pre-natal tests related to sex determination of fetuses, an operation had been conducted by PNDT teams of Rohtak and Delhi. During the operation, it was discovered that respondent no. 2 i.e. one of the doctors at respondent no. 1 clinic, had disclosed the sex of the fetus. Furthermore, currency notes had also been seized from respondent no. 3 and 4, who had been acting as touts to the decoy patient. Thereafter, independent separate statements of the staff working at the clinic were recorded, confirming that respondent no. 1 to 4 had been engaged in the business of performing ultrasounds and disclosing the sex of the fetus to the patients. Based on these statements and evidence gathered from the said operation, both the PNDT teams had arrived at a conclusion that the respondents had contravened and committed offences under the PC&PNDT Act and the Indian Penal Code. Accordingly, an FIR bearing no. 0132/2016, dated 02.03.2016, was registered at P.S. Khayla and the accused persons were arrested. After investigation, chargesheet was filed before the learned MM and the accused persons were summoned *vide* order dated 31.08.2017.

3. Thereafter, a complaint i.e. Crl. CC No.1505/2018 under Section 28 of PC&PNDT Act was also filed by the petitioner against the accused persons, however, the learned Metropolitan Magistrate (West), Tis Hazari Courts, Delhi *vide* order dated 15.04.2019 had dismissed the same. Against this dismissal, the petitioner had preferred a revision petition i.e. Crl.Rev.P. No. 264/2019, however,



the same was dismissed *vide* order dated 09.10.2019 by the learned ASJ on account of unexplained delay of 28 days in filing the same.

4. Aggrieved by the aforesaid order of learned ASJ, the present petition has been filed.

5. Learned ASC for the State, appearing on behalf of petitioner, submits that there was a total delay of 28 days in filing the revision petition, however, the petition has been rejected on the ground that there was no day-to-day explanation of the delay. It is argued that the allegations in the complaint are serious in nature, and the intent of the legislature in enactment of PC&PNDT Act was to deal with the offenders strictly. It is stated that it had taken sometime for the prosecution to file revision petition as the file had to pass through several departments and therefore, in the larger interest of the society and to ensure that the culprits are tried as per law as it is a case of revealing gender by a doctor and diagnostic centre, the present petition be allowed and the impugned order be set aside.

6. Learned counsels for the respondents, on the other hand, state that there is no illegality or infirmity in the order passed by the learned ASJ. It is also stated that the learned ASJ had rightly rejected and dismissed the plea of the petitioner on account of unexplained delay.

7. The arguments addressed by both sides have been heard and material on record has been perused.

8. The short issue before this Court is whether the learned ASJ was justified in dismissing the revision petition filed by the petitioner on the sole ground of delay of 28 days in filing the same.



9. At the outset, this Court takes note of the judgment dated 24.07.2023 of the Hon'ble Apex Court in case of *Raheem Shah & Anr. v. Govind Singh & Ors. SLP (C) No. 27901/2015*, where the Court while emphasizing upon the need to adopt justice oriented approach while deciding applications seeking condonation of delay, had set aside the impugned order vide which the appeal filed by the appellant therein had been dismissed on account of delay of 52 days. The relevant observations in this regard read as under:

4. This Court in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107 has held as hereunder:

“The legislature has conferred the power to condone delay by enacting Section 5 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-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. **Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.** As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? **The doctrine must be applied in a rational common sense pragmatic manner.**



4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”

5. The **above decision expressing the intention of justice oriented approach percolating down to all the courts was rendered nearly three decades ago but unfortunately the case on hand demonstrates the pervading insensitive approach, which apart from continuing the agony of the litigants concerned has also unnecessarily burdened the judicial hierarchy which after going through the entire process will have to set the clock back, at this distant point in time and prolong their agony. If only the court concerned had been sensitive to the justice oriented approach rather than the iron-cast technical approach,** the litigation between the parties probably would have come to an end much earlier after decision on the merits of their rival contention.

6. If that be the position, **the very manner in which the lower Appellate Court has dismissed the appeal on the ground of delay when the delay was not inordinate is not justified** and the High Court was also not justified in dismissing the appeal only on the ground that there was no question of law...”

(Emphasis supplied)

10. A three-judge bench of Hon’ble Apex Court in case of *Brahampal @ Sammay v. National Insurance Company (2021) 6 SCC 512*, while dealing with a case where the Hon’ble High Court



Uttarakhand had dismissed an appeal on account of delay of 45 days, had observed as under:

“20. The Court in the above-mentioned cases, highlighted upon the importance introducing the concept of “reasonableness” while giving the clause “sufficient cause” a liberal interpretation. **In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate** as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party’s inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties.

22. ...Coming back to the Motor Vehicles Act, the **legislative intent is to provide appropriate compensation for the victims** and to protect their substantive rights, in pursuit of the same, the **interpretation should not be as strict as commercial claims** as elucidated above.

(Emphasis supplied)

11. In *Hemlata Verma v. M/s ICICI Prudential Life Insurance Co. Ltd. & Anr.* Civil Appeal No.5131/2019, while setting aside an order of National Consumer Disputes Redressal Commission whereby the Commission had refused to condone delay of 207 days, the Hon’ble Apex Court had again observed that a liberal approach should have been adopted while dealing with condonation of delay.

12. The Hon’ble Supreme Court in *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs* (2008) 8 SCC 321, had emphasized upon adopting practical and liberal approach while deciding applications under Section 5 of the Limitation Act. The relevant observations are as under:



“13. ...The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, **practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case.** The words “**sufficient cause**” in Section 5 of the Limitation Act **should receive a liberal construction so as to advance substantial justice**, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.”

(Emphasis supplied)

13. Having heard the arguments and examined the judicial precedents, this Court is of the view that every order is a quest for search of truth and the intent of the legislature has to be kept in mind while passing every order. Though in every case, the delay in filing the a petition cannot be condoned, however, in cases where the larger interest of the society is involved, denying trial of the case by dismissing an application for condonation of delay of 28 days will result in miscarriage of justice as the crime alleged is an offence against society. The primary intent of PC&PNDT Act is to safeguard the rights of the unborn girl child and promote gender equality by curbing the misuse of diagnostic techniques for sex determination. Therefore, while deciding applications seeking condonation of delay, Courts should prioritize the Act's underlying purpose over technicalities.

14. Thus, keeping in view the mandate of judicial precedents and law, as discussed above, this Court is inclined to allow the present petition and condone the delay of 28 days in filing the revision petition before the Revisionist Court. Accordingly, the case is



remanded back to the court of learned ASJ to decide the revision petition on merits, as per law.

15. In view of the above, the present petition stands disposed of.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 31, 2023/zp