



vinita

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.24 OF 2022

WITH

**STAMP NUMBER MAIN NO.1274 OF 2020 (F), CRIMINAL MISC.
APPLICATION NO.739 OF 2024 (F), CRIMINAL MISC. APPLICATION
NO.25 OF 2022**

CRIMINAL MISC. APPLICATION NO.24 OF 2022

CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH, THR. PALAK
BHATTACHARYA, PSI, CBI, ACB,

... APPLICANT

Versus

A. SHIVARAM PAI AND 2 ORS

... RESPONDENTS

WITH

STAMP NUMBER MAIN NO.1274 OF 2020 (F)

CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH, THR,
PALAK BHATTACHARYA, PSI,CBI, ACB

... PETITIONER

Versus

A. SHIVARAM PAI AND 2 ORS

... RESPONDENTS

WITH

CRIMINAL MISC. APPLICATION NO.739 OF 2024 (F)

CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH

... APPLICANT

Versus

A. SHIVARAM PAI AND 2 ORS

... RESPONDENTS

WITH

CRIMINAL MISC. APPLICATION NO.25 OF 2022

CENTRAL BUREAU OF INVESTIGATION,
ANTI-CORRUPTION BRANCH, THR.
ABHISHEK KUMAR, PSI, CBI, ACB,
GOA.

... APPLICANT

Versus

A SHIVARAMA PAI AND 2 ORS

... RESPONDENTS

Ms A.Desai, Advocate for the applicant.

Mr M. Valadares, Advocate for respondents. 2 and 3 in CRMA No.
25/2022

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 3rd September, 2024

P.C.

Heard Ms A. Desai, learned Standing counsel for the applicant and Mr M. Valadares, learned counsel for respondents. 2 and 3 in CRMA No. 25/2022.

2. Both these applications are filed for condonation of delay in filing an appeal thereby challenging the impugned judgment and acquittal passed by the Sessions Court, vide order dated 28.5.2019. There is also an application for leave to file appeal, along with main appeal as well as delay application.

3. Respondents are original accused persons in case no.12/2013 which was pending before the learned Sessions Court wherein all the respondents were acquitted by impugned order dated 28.5.2019. Application for condonation of delay along with leave to appeal, memo of appeal are presented on 28.7.2022 before this Court.

4. Ms Desai would submit that minute details of the movement of the file is disclosed in the application. She submits that though application discloses that there is delay of 365 days, the delay is in fact only of 227 days in CRMA No. 24/2002 and 125 days in CRMA No. 25/2002, as the period of appeal to be filed by the State/CBI is six months and not 90 days.

5. Ms Desai would submit that the relevant approvals were obtained from the concerned department and since even the officer who was looking after the said appeal retired in between and another officer

expired, there was a delay in filing the appeal. She submits that delay is due to procedural aspects and not on any deliberate attempts on the part of the department.

6. Ms Desai while placing reliance in the case of Collector, Land Acquisition, Anantnag Vs MST Katiji, 1987 Law Suits (SC) 214, would submit that the explanation on affidavit is sufficient enough to condone the delay.

7. Per contra Ms Valadares appearing for respondent nos.2 and 3 while placing reliance in the case of Postmaster General and others Vs. Living Media India Limited and another, (2012) 3 SCC 563, would submit that the applicant's department is well equipped with all legal advice and knew what is procedure to be followed for filing of the appeal together with a period of limitation. However, delay in filing of the said appeal is not properly explained.

8. The main purpose of filing of the application for condonation of delay is to submit sufficient grounds for the purpose of condoning the delay in filing of the proceedings including an appeal.

9. In the case of Postmaster General (supra), the Apex Court observed that person(s) concerned who are well aware or conversant with the issues involved including the period of limitation for taking up the matter in case of filing of the appeal must show sufficient cause for filing such appeal belatedly. Even if it is a government department no criteria could be culled out from the other litigant and delay must be explained in the proper manner.

10. In the case of Collector (supra), the Apex Court has observed that

when the applicant is government or a department, similar treatment which is required to be given to the private litigant has to be given and the department must explain the reasons to the satisfaction of the Court while condoning the delay.

11. Application filed for condonation of delay is on affidavit of the concerned officer. From paragraphs 5 to 7 of the application delay was disclosed by dates, movement of the concerned file and officer who handled it. These minute details filed supported by an affidavit would clearly go to show that delay has been satisfactorily explained. It is also required to be noticed that one of the officers, who was handling the matter superannuated in the meantime, whereas the advisor of the applicant expired in the meantime. It is also a matter of record that the Special Public Prosecutor who filed present proceedings in this Court, subsequently expired therefore, matter was required to be allotted to another special Public Prosecutor for which procedure has to be followed.

12. Facts which are found at paragraphs 5 to 7 in the application clearly discloses the movement of the file along with dates and the officer who handled it. Such movement of file is as per procedure adopted by the department for the purpose of granting approval for challenging the order passed by the Special Court.

13. Ms Desai would submit that the delay is only 227 and 195 days respectively since the calculation of the period of limitation was incorrectly done. She submits that the period for filing an appeal by the applicant department is actually six months as provided under

section 378 of Cr.P.C.

14. Be that as it may, length of delay is not concerned but it should be satisfactorily explained.

15. Matter in hand would clearly go to show that explanation given in the application supported by an affidavit of concerned officer discloses sufficient cause. Accordingly, delay in filing of the appeal along with application for leave to appeal needs to be condoned.

16. Applications stand allowed. Delay is condoned Criminal Misc. Application No. 24 of 2022 and 25 of 2022 stand disposed of in above terms.

BHARAT P. DESHPANDE, J.