

CRM-M-53087-2023 (O&M)

(118A)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53087-2023 (O&M)
Date of Decision: 14.02.2024

BIJENDER KUMAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Robin Singh Hooda, Advocate
for the petitioner.

Mr. Ravish Kaushik, Addl. A.G., Haryana.

JASJIT SINGH BEDI, J (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order framing charges dated 10.10.2022 (Annexure P-2) passed by the CJM, Panipat in case arising out of FIR No.298 dated 06.10.2021 (Annexure P-1) registered under Sections 419, 420 and 120-B of the IPC and Sections 66-C, 66-D of IT Act, 2008 at P.S. Sector 13/17, Panipat and the order dated 22.09.2023 (Annexure P-4) of the ASJ, Panipat whereby the application for condonation of delay was dismissed along with the criminal revision petition filed by the petitioner.

2. The brief facts of the case are that the aforementioned FIR came to be registered at the instance of ASI Parmod Kumar with the allegations that Ashok alias Shoki etc. used to take huge amount of money from the students/candidates in lieu of passing them in online exams pertaining to Government jobs, IIT and other entrance exams and thereby had amassed huge assets. The copy of the FIR is attached as Annexure P-1 to the petition.

3. Pursuant to the conclusion of the investigation, the report under Section 173(2) Cr.P.C. was submitted and vide order dated 10.10.2022, charges were framed against 56 persons including the petitioner under Sections 120B, 420 and 201 of the IPC and Sections 66C, 66D of IT Act. The copy of the order dated 10.10.2022 is attached as Annexure P-2 to the petition.

4. The petitioner preferred a revision petition against the order dated 10.10.2022 along with an application for condonation of delay on the grounds that he was simple person with little education and no knowledge of limitation and had been improperly advised by his counsel. The Court of ASJ, Panipat dismissed the application for condonation of delay along with the revision petition vide order dated 22.09.2023 (Annexure P-4).

5. The aforementioned orders dated 10.10.2022 and 22.09.2023 (Annexures P-2 and P-4) are under challenge in the present petition.

6. The learned counsel for the petitioner right at the very outset contends that he does not wish to press the challenge to the order framing charges but confines his prayer to quashing of the order (Annexure P-4) whereby his application for condonation of delay of 190 days in filing the present revision petition and the revision petition itself came to be dismissed on account of the said limitation. He contends that two similarly placed co-accused namely, Ishwar and Rounaq had filed a revision petition with a delay of 26 days and stood discharged vide orders dated 03.05.2023 (Annexure P-5). Similarly, Amit Kumar @ Mitu had also been discharged vide order dated 03.05.2023. He contends that once the delay of 26 days in the case of Ishwar and Rounaq stood impliedly condoned and they were discharged, the

Revisional Court ought to have condoned the delay of 190 days in the case of the petitioner and should have heard on the merits of the case. Reliance is placed on the judgment in the case of **Collector, Land Acquisition, Anantnag & another Versus Mst. Katiji & others, 1987 AIR (Supreme Court) 1353** wherein, it has been held that the question of condonation of delay should be considered liberally and ordinarily, when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

7. The learned State counsel has opposed the prayer of the petitioner but fairly concedes that in the case of two similarly placed co-accused, the delay had been condoned and the said accused had been discharged.

8. I have heard the learned counsel for the parties.

9. The Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag & another Versus Mst. Katiji & others, 1987 AIR (Supreme Court) 1353**, held as under:-

“Thakkar, J. - To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another.
2. An appeal preferred by the State of Jammu and Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800% (from Rs. 1,000 per kanal to Rs. 8,000 per kanal) which also raised important questions as regards principles of valuation was dismissed as time barred being 4

days beyond time by rejecting an application for condonation of delay. Hence this appeal by special leave.

3. The legislature has conferred the power to condone delay by enacting Section 5 "Any appeal or any application, other than an application under any of the provisions of O. XXI of the Civil Procedure Code, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period." 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 realised 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 legalise 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. The fact that it was the 'State', which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to

informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

4. Appeal is allowed accordingly. No costs.

Appeal allowed."

(emphasis supplied)

10. Coming back to the facts of the instant case, it is apparent from the record that after charges came to be framed against the petitioner and his two co-accused namely Ishwar and Rounoq filed a revision petition with a delay of 26 days before the Court of ASJ, Panipat which came to be allowed and the petitioner therein stood discharged. Similarly, Amit Kumar @ Mitu had also filed a revision petition though without any delay and also stood discharged. So far as the petitioner is concerned, he filed a revision petition with a delay of 190 days. An application for condonation of delay was also filed. While considering the case, the Revisional Court dismissed the application for condonation of delay and consequently the revision petition itself. This approach, in my opinion, is unduly harsh to the petitioner. He did not stand to gain in any manner whatsoever by filing the revision petition with delay. Further, the Hon'ble Supreme Court in **Collector, Land**

Acquisition, Anantnag (supra) has categorically held that the issue of delay should be considered liberally and the Courts ought to condone the same. The cause of substantial justice deserves to be preferred over technical considerations.

11. In view of the above discussion, I find considerable merit in the present petition and therefore, the order dated 22.09.2023 (Annexure P-4) stands quashed. The matter is remanded back to the Revisional Court for a fresh adjudication on the merits of the case.

12. It is clarified that this Court has not expressed any opinion on the merits of the case.

(JASJIT SINGH BEDI)
JUDGE

14.02.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No