

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL MISC. APPLICATION NO. 80 OF 2023****IN****CRIMINAL APPLICATION (MAIN) NO. 386 OF 2023**THE STATE OF GOA (WOMEN
POLICE STATION), PANAJI

... APPLICANT

VS

GERARD ALMEDIA

... RESPONDENT

Mr. Pravin Faldessai, Additional Public Prosecutor for the Applicant.

Mr. Shaish Naik with Mr. Vibhav Amonkar, Advocates for the Respondent.

**CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED: 8th APRIL 2025

P.C:

1. The Applicant-State seeks condonation of delay of 160 days in raising a challenge to the judgment and order dated 25.10.2022 passed by the Children's Court at Panaji, Goa in Special Case No. 83 of 2021.

2. By the said judgment, the Court has acquitted the Respondent for the offence punishable under Sections 354, 354-A(1)(iii), 376 and 376(2)(f)(j)(k) of IPC as well Section 8(2) of the Goa Children's Act, 2003 and Sections 3, 5(n)(p), 7 and 11 punishable under Sections 4, 6, 8 and 12 of the POCSO Act.

In presenting the Appeal on merits, it is stated that the acquittal is based on perverse findings and since delay has occasioned, the present Application is taken up seeking condonation of delay.

3. The Application filed by the State is strongly opposed by Mr. Naik representing the Respondent and according to him, no sufficient cause has been shown in condoning the delay and merely because the Applicant/Appellant is a State, it shall not stand on a different footing than a private litigant, on whom the duty is cast to explain the delay, if an Appeal is filed beyond the period of limitation prescribed.

He would place reliance on the decision of Apex Court in the case of **Pathapati Subba Reddy (Died) by LRs & Others Vs. The Special Deputy Collector (LA), 2024/INSC/286**, where the Apex Court has culled down the propositions of law as regards the law of limitation and has specifically observed that the provision under Section 3 of the Limitation Act has to be construed in a strict sense whereas Section 5 has to be construed liberally and in any case in order to advance substantial justice, though liberal and justice-oriented approach is the rule, the Court shall keep in mind the fact that the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act, 1963.

He has also placed reliance upon the decision in the case of **Hyder Vs. State of Kerala** [arising out of SLP (Cri) No. 14267 of 2023 dated 10.12.2024], where the High Court had condoned the delay of 1184 days and this finding was reversed by the Apex Court by recording that the merits of the matter cannot be gone into while considering condonation of delay.

4. In the background of the above observations, we have perused the Application, where it is categorically stated that the impugned order was passed on 25.10.2022 and the certified copy of the order was applied for on the same day, which was ready for delivery on 28.11.2022. It is stated that the Appeal ought to have been filed on or before 28.12.2022, however, the same is filed with a delay of 160 days.

5. In the Application, from paragraph 5 onwards, the reasons for the delay are set out and it is stated that after the judgment was passed on 25.10.2022, the opinion of the Public Prosecutor of the Children's Court was received on 05.12.2022 and thereafter, the file was forwarded to the office of Superintendent of Police, Women's Police Station, Panaji for further approval. Thereafter, on 03.01.2023, the office of the Superintendent of Police was requested to prefer an Appeal and the file was sent to the Director of Prosecution, who accorded his consent on 16.02.2023 and thereafter, the file was forwarded to the Home Department. It

again required processing through the Under Secretary (Home) as well as the Special Secretary (Home) and the Chief Secretary and ultimately through the Hon'ble Chief Minister and this process came to an end on 12.02.2023, when the Hon'ble Chief Minister approved the filling of the Appeal and the file came to be returned through the same process and accordingly, it was received in the office of the Under Secretary (Home) on 16.02.2023 and on 17.02.2023, the Director of Prosecution was communicated of the approval for filing the Appeal.

Upon receipt of such communication, the Director of Prosecution processed the file and entrusted the file to the Public Prosecutor and the entire procedure was completed on 30.02.2023 and the Appeal came to be filed on 02.03.2023, but with a delay of 160 days.

6. The law as regards limitation is well settled and it must be borne in mind that the delay can be allowed to be condoned only when "sufficient cause" has been shown, as the law of limitation is based on the general public policy i.e. it is for the general welfare that the period of limitation must be put to a litigation. Even if the legal remedy is to be availed, the period has been fixed so that the party in whose favour the relief is granted do not wait for the fruits of the decision for a considerable period of time. However, when the question comes as to the delay on the part of the Government, in the case of **Collector, Land Acquisition, Anantnag &**

Others Vs. Katiji & Others, (1987) 2 SCC 107, while adopting the liberal approach in condoning the delay, it is categorically held that it is not necessary to explain every day's delay in filing the Appeal and sometime refusal to condone the delay may result in throwing out a meritorious matter and therefore, the Court should always keep in mind, that the cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned.

7. This very principle has been reiterated by the Apex Court in the case of **Pathapati Subba Reddy** (supra), when the principles on the law of limitation have been culled out by specifically holding that the Courts are empowered to exercise discretion to condone the delay if 'sufficient cause' has been explained, but that exercise of power is discretionary in nature and may not be exercised even if 'sufficient cause' is established or there is inordinate delay, negligence and want of due diligence.

8. The aforesaid factors being the guiding factors while deciding an Application for condonation of delay, when we examined the reasons given in the Application, we find that the Government was not sitting idle and since it had to cross various stages and the procedure followed as the file had to move from one Authority to another and it reached up to the office of the Hon'ble Chief Minister, it definitely consumed some time, but it cannot be

said that the Government has adopted a lackadaisical approach, so as to make us believe that it was negligent in not filing the present Appeal within the period of limitation.

In any case, if there is an acquittal of the Accused from the serious charge under Section 376 of the IPC as well as Section 8(2) of the Goa Children Act and Sections 4, 6, 8 and 12 of the POCSO Act and even in the larger public interest, we deem it appropriate to condone the delay as we find that the delay has been properly explained and it is not a case of inordinate delay being attributed to the negligence of the State Authority.

9. In the wake of the aforesaid, the Application is made absolute in terms of prayer clause (a).

10. List Criminal Application (Main) No. 386 of 2023 (F) on 22.04.2025.

NIVEDITA P. MEHTA, J. BHARATI DANGRE, J.