IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 313 of 2025
Order Reserved on : 10.10.2025
Date of order : 31.10.2025

Bidhi Chand ...Applicant

Versus

State of H.P. & Ors. ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting? Yes.

For the applicant : Mr. Udit Shaurya Kaushik, Advocate.

For the respondents : Mr. Tejasvi Sharma, Addl. A.G. with Mr. Rohit Sharma, Deputy A.G., for respondent No. 1.

Mr. B.S. Chauhan, Senior Advocate, with Ms. Aditi Rana, Advocate, for respondents No. 2 to 6.

Virender Singh, Judge

Applicant-Bidhi Chand has preferred the accompanying Criminal Appeal, under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter

referred to as 'BNSS'), against the judgment of acquittal, dated 28.02.2024, passed by the Court of learned Judicial Magistrate First Class, Hamirpur, H.P. (hereinafter referred to as 'the trial Court'), in case titled as 'State of H.P. Vs Rakesh Kumar & Ors.'. The learned trial Court, vide judgment of acquittal, dated 28.02.2024, has acquitted respondents No. 2 to 6, from the offences punishable under Sections 147, 149, 427, 504 of Indian Penal Code.

2. Since, the appeal has been filed after the prescribed period of limitation, as such, by moving the present application, delay of about 269 days, in filing the accompanying appeal has been sought to be condoned.

3. The delay has been sought to be condoned mainly on the ground that the proceedings before the learned trial Court were ordered to be stayed by this Court vide order dated 04.02.2020, passed in Cr.MMO No. 77 of 2020, and the applicant remained under the bonafide belief that since the matter is pending adjudication before the High Court, as such, the learned trial Court could not proceed with the matter, whereas, the learned trial Court

has decided the matter vide judgment dated 28.02.2024.

4. The delay has also been sought on the ground that the applicant was not having the knowledge of law, as such, due to lack of legal knowledge, he could not approach his Counsel to prefer the appeal. It is his further case that in the month of July, 2024, when he came to know about the disposal of the case by the trial Court, he has filed the present appeal.

5. On the basis of above grounds, the applicant has prayed for condonation of delay.

6. When put to notice, the application has been contested by the respondents.

7. State-respondent No. 1 has denied the factual position and prayed that there is no explanation for the delay, as such, applicant is stated to be negligent, and hence, a prayer has been made to dismiss the application.

8. Respondents No. 2 to 6, have also contested the application on the ground that the application is not maintainable, as no charge, under Section 447 of IPC, has been framed by the learned trial Court and as such, the

applicant has preferred the Cr.MMO No. 77 of 2020, in which, this Court had stayed the proceedings, vide order dated 04.02.2020.

9. Thereafter, the matter remained pending on various dates and stay was extended only till 24.11.2021 and thereafter, no request for extension has been made. Cr.MMO No. 77 of 2020, was decided on 10.07.2024.

10. The prayer has also been opposed, on the ground, that, applicant himself was not vigilant to pursue the matter before this Court, as well as, before the learned trial Court. Therefore, his application is liable to be dismissed.

11. On merits, application has been contested on the same grounds.

12. As per the documents annexed with the petition, the applicant had preferred the Cr.MMO No. 77 of 2020 before this Court and, on 04.02.2020, this Court in Cr.MP No. 331 of 2020, has passed the following order:-

> "Notice in the above terms. As the main petition is pending adjudication and in order to avoid multiplicity of litigation, it is ordered that till the

> next date of hearing, further proceedings pending before the learned Court below shall remain stayed."

13. Thereafter, the said interim order was extended on 24.11.2021. Thereafter, the matter remained pending on various dates and ultimately, Cr.MMO No. 77 of 2020, was dismissed by this Court on 10.07.2024. The petition was decided on 10.07.2024, whereas, the learned trial Court has decided the matter on 28.02.2024.

14. It is admitted position, in this case, that in Cr.MMO No. 77 of 2020, the applicant was duly represented by his Counsel and his revision was, thereafter, dismissed by this Court, whereas, the matter has already been decided by the learned trial Court by acquitting respondents No. 2 to 6, on 28.02.2024.

15. The FIR was lodged by applicant Bidhi Chand and he falls within the definition of victim, who has right to assail the judgment of acquittal.

16. The replies filed by the State, as well as, respondents No. 2 to 6, are totally silent about the fact as to what object the applicant is going to achieve in preferring

the appeal after the prescribed period of limitation, had he not been prevented to do so, be the reasons, as mentioned in the application.

17. Admittedly, the applicant was not represented by any Counsel and his case was being prosecuted by the learned APP, as such, the applicant is able to make out a case for condonation of delay in his favour.

18. State has not opted to assail the judgment of acquittal and interestingly, the application for condonation of delay has been contested by the State, by filing the reply, by taking the plea that the applicant was negligent. The State has no locus to contest the application for condonation of delay, as the appeal preferred by the applicant was against the judgment of acquittal and not against the judgment of conviction and weighing the stand of respondent No. 1 in the golden scale of the maxim that the crime is always against the State, the stand of the State is not liable to be taken into consideration.

19. The reply of respondents No. 2 to 6, is totally silent about the fact as to how the applicant is negligent in

pursuing the matter, nor anything has been mentioned, in the reply, about the alleged knowledge of the applicant regarding the judgment of acquittal.

20. The applicant is a senior citizen, aged about 65 years and it cannot be expected from a person, in whose favour, stay order is there, to inquire about the proceedings, which have been stayed. In other words, when the proceedings before the trial Court were ordered to be stayed on 04.02.2020, then it cannot be expected from the applicant to appear before the trial Court in order to know the fate of his case.

21. Even otherwise, his petition was dismissed on 10.07.2024, and matter has been decided by the trial Court on 28th February, 2024. In such situation, when reply is silent about the object, which, the applicant is going to achieve, in filing the appeal, after the prescribed period of limitation, had he not been prevented to do so, for the reasons, as mentioned in the application, the stand, as taken by the applicant, cannot be doubted.

22. Moreover, it cannot be expected from a common

man to know about the technicalities of law, especially the period of limitation, which is prescribed for the complainant for approaching to the Higher Court, against the judgment of acquittal. If the facts and circumstances of the present case are seen in the light of the decision of Hon'ble Apex Court in a case titled as "**Collector Land Acquisition Vs Katiji** reported in **(1987) 2 SCC 107**", the applicant is able to make out a case for condonation of delay. Relevant paragraph 3, of the judgment, is reproduced, as under:-

> "*3. "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:*
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> > *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."

23. Considering the above facts, the prayer for condonation of delay is allowed and the delay in filing the accompanying appeal is ordered to be condoned. Application is accordingly disposed of.

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24. Vide order of the even date, passed in Cr.MP(M) No. 313 of 2025, the delay in filing the Criminal Appeal has been ordered to be condoned. Appeal be registered.

List on **10.11.2025**.

(Virender Singh)
Judge

31st October, 2025
(*Pramod Kumar*)