16.
07-10-2026
(ct. no.34)
debajyoti

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 4626 of 2025

M/s Auckland Nirman Private Limited & Anr.
Vs.
Jagjeet Singh Kohli

Mr. Kaushik Chatterjee, Adv.,
Mr. Thirthankar Dey, Adv.
... For the Petitioners.

Mr. Rachit Lakhmani, Adv,
Ms. Emon Bhattacharya, Adv.,
Mr. Subhankar Dutta, Adv.
... For the Opposite Party.

1. This is an application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 corresponding to Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita filed by the petitioners assailing an order dated August 08, 2025 passed by the Chief Judge, City Sessions Court, Calcutta, for an application under Section 5 of the Limitation Act, 1963. Pursuant to the order, the revisional application has been ad mitted and delay of 532 days in preferring such application was condoned and an amount of Rs.10,000/- was imposed.

2. The case of the petitioner in brief is that the opposite party herein preferred an application before the learned Chief Metropolitan Magistrate, Calcutta, against the petitioners by filing a petition of complaint under Section 156(3) of the Code of Criminal Procedure alleging commission of offence punishable under Sections 420/467/468 of the Indian Penal Code.

3. The learned Magistrate after hearing the contentions of the opposite party directed the Officer-in-Charge of the New Market Police Station to conduct a preliminary enquiry and to submit a report. The investigating agency in consonance with such direction, filed a report wherein it was

stated that the dispute mentioned in the application is purely civil in nature. After considering the said police report, the learned Chief Metropolitan Magistrate by an order dated January 19, 2023 converted the said application filed under Section 156(3) of the Code of Criminal Procedure to an application under Section 200 of the Code and transferred to the court of learned 11th Metropolitan Magistrate for judicial enquiry. The transferee court after examining the complaint of the opposite party no.2 and the witnesses, passed an order on July 28, 2023 whereby the application filed under Section 203 of the Code of Criminal Procedure was dismissed.

4. On the similar issue, a writ petition being WPA 7321 of 2024 was filed by the opposite party no.2 on March 08, 2024 and the said matter was heard at length by the learned coordinate Bench and on July 02, 2024, the said writ petition was disposed of.

5. After disposal of the writ petition, a revisional application was filed by the present opposite party being Criminal Revision No.123 of 2025 before the learned Chief Judge, City Sessions Court, Calcutta, challenging the order dated July 28, 2023, thereby causing a delay of 523 days in preferring such revisional application. Accordingly, the application under Section 5 of the Limitation Act has been filed while preferring such revisional application.

6. The said application filed under Section 5 of the Limitation Act was considered by the learned Chief Judge, City Sessions Court, Calcutta and it was allowed with the observation that the opposite party was suffering from serious illness and due to such precarious health condition, he could not file the application within the stipulated time. Accordingly, the learned court condoned the delay subject to payment of cost of Rs.10,000/- to be paid to the District Legal Services Authority, Calcutta.

7. The learned advocate representing the petitioners before this Court submits that the learned court has failed to consider that in the application filed under Section 5 of the Limitation Act, there was almost no explanation and it was devoid of any material particulars indicative of gross negligence and deliberate inaction and also lack of bona fide despite that such ground was considered by the learned Sessions Judge. It is further argued that the opposite party has tried to impress the court as a ground of condoning the delay stating that he is a senior citizen who is aged about 75 years and is suffering from serious illness and was almost bedridden from 2023 to 2025 which is not correct.

8. It is significant to note that the writ petition was affirmed on March 07, 2024 by the son of the present petitioner and the writ petition was filed on March 08, 2024. The order impugned was dated July 28, 2023 and, the order was passed in presence of the present opposite party and not only that he was examined under Section 200 of the Code and only thereafter the learned Magistrate passed such order. The certified copy of the said order was made over on July 05, 2024 which was received on July 23, 2024. But the revisional application was filed on May 03, 2025. Therefore, there is a long and unexplained delay for the period from July 23, 2024 till filing of the revisional application on May 03, 2025, even if the contention of the present opposite party is considered that he was suffering from illness. In this regard, reliance has been placed in the decision reported in (***2024) 12 Supreme Court Cases 336 [Pathapati Subba Reddy (died) by Legal Representatives and Ors. Vs. Special Deputy Collector (LA)]***.

9. The Hon'ble Supreme Court observed that the law of limitation was founded by public policy and it is for the general welfare that a period of limitation be put to litigation. It was further observed that the object was to put an end to every legal remedy and to have a fixed period of life for every

litigation as it is futile to keep any litigation or dispute pending indefinitely. The Hon'ble Supreme Court observed in paragraph 27 taking note of the decision in Basawaraj Vs. LAO, (2013) 14 SCC 81, which reads as follows:

> *" This Court in the same breath in the same very decision vide para 15 went on to observe as under:*
>
> > *"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. "*

10. In another decision relied upon by the learned advocate for the petitioners reported in **(2016) 6 Supreme Court Cases 207 (Pankajakshi (dead) through legal representatives and Ors. Vs. Chandrika and Ors.)**, where delay is of 944 days and ground was taken that of illness and he was suffering from psoriasis for the last 30 years and was diabetic for the last 12 years. The Hon'ble Supreme Court held that the ailments from which the original petitioner was suffering for so many years do not make out illness as a justification for condonation of long delay and since the delay remained unexplained, the Special Leave Petition was dismissed.

11. Therefore it is no more *res integra* that determination of sufficient cause rests on the equitable discretion of the courts guided by the principles of fairness and justice. This Court cannot brush aside the fact that in this case, the

present petitioner who is an octogenarian person and it is not unusual that he would suffer from old age ailments .The writ petitioner was affirmed not by the petitioner but his son. It is submitted by the Learned advocate of the petitioner that due to the illegal conduct of the present petitioners he had to ran from pillar to post and despite his all attempt the court refused to allow his prayer only on the ground that several proceedings are pending without giving any weightage of the allegation of forgery as specifically assailed. That apart he did not intend to drag his young son into any criminal case which might have a long drawn consequences.

12. The record reveals that the original allegation that was levelled against the present petitioners relates to forgery, cheating, etc. Apparently, it is seen from the report furnished before the learned Magistrate by the concerned police official the opinion was made that the dispute is civil in nature and the learned court accepted such report.

13. This Court while considering the propriety of an order cannot enter into the merits of the case or adjudicate the legality or otherwise of the order passed by the Learned Magistrate however the opposite party ought to be afforded an opportunity to assail the said order in accordance with law .The right of complainant who has allegedly suffered substantial financial loss and is stated to be a senior citizen aged about 75 years ought not to be defeated on mere technical ground of not furnishing enough sufficient cause . The question of the limitation must, therefore be considered in manner that does not unduly prejudiced the right of the complainant.

14. Learned Chief Judge, City Sessions Court while allowing such prayer considered the medical documents and was of the view that the opposite party was suffering from illness. Due to precarious and serious health condition, he could not file the revisional application in time. This Court primarily do not find any material irregularity or impropriety in the said order impugned.

15. Accordingly, in view of the above, this Court is of the view that there is no merit in this case for which interference is necessary. Accordingly, the revisional application stands dismissed.

16. The order passed by the Learned Judge City Session Court is hereby affirmed.

17. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

18. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]