

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

IA (CrI.) 25(AP)/2018 IN CrI. Rev.P. 17(AP)/2018

Director, CBI

Applicant.

-Vs-

Surendra Kumar Badiala & 4 Ors.

Respondents.

Advocate for the Petitioner	: Mr. M. Kato
Advocate for State-respondent No. 1, 2 & 3	: Mr. B. Prasad
Advocates for respondent No. 4 & 5	: Mr. R.P. Sarma & Mr. T. T. Tara.

BEFORE

HONOURABLE MR. JUSTICE MIR ALFAZ ALI

Decided on : 29-07-2019

JUDGMENT & ORDER (ORAL)

1. Heard Mr. M. Kato, learned counsel for the petitioner/CBI. Also heard Mr. R.P. Sarma, learned senior counsel assisted by Mr. T.T.Tara, learned counsel for respondent Nos. 4 and 5 and Mr. Biswajit Prasad, learned counsel for respondent Nos. 1, 2 and 3.
2. By this application under section 5 of the Limitation Act, 1963, the petitioner/CBI has prayed for condonation of delay of 326 days in preferring the criminal revision against the order dated 11.09.2017 passed by Special Judge, PC(WSD), Yupia, Arunachal Pradesh in PCA Case No. 03/2016, whereby the learned Special Judge discharged the respondent Nos. 1 to 5 of the charge under section 120-B/420/34 IPC read with section 13 (2)/13 (1) (d)/15 of the P.C. Act, 1988.

3. The petitioner has explained the cause of delay in para 4 of the petition as follows:-

"4. That the Revision Petitioner received the copy of the impugned order on 11/09/2017 which was put on 12/09/2017 at the Branch after which Certified copy of Order as well as Opinion of the Law Officer dated 17/09/2017 and the comment of Head of Branch dated 07/12/2017 was forwarded to Head of Zone on 07/12/2017 which took 87 days. The Head of Zone forwarded the same to the Dy. Legal advisor, Kolkata on 28/12/2017 and the same is return back to Head of Zone on 11/01/2018 which took another 14 days. On 22/01/2018, the Head of Zone forwarded to ADCBI(RA), New delhi, ADCBI(RA) marked the same to Director of Prosecution, New Delhi on 24/01/2018 and then the DOP marked the same to ALA, New Delhi on the same day and ALA, New Delhi on the same day and ALA return the same to DOP on 29/01/2018. The Director Prosecution sent the same with his comment to Addl. Director, CBI, New Delhi on 13/02/2017. Addl. Director CBI, New Delhi marked the same to DCBI, New Delhi on 18/02/2017. The Director, CBI, New Delhi finally approved for the Cril. Revn. On 21/02/2017, in the process it took another 163 days. Thereafter, the same is received back to the branch on 01/03/2018 and the same marked to HIO for prepare necessary material and ground for Revision etc. for sending to Retainer Council for necessary action for preparing Revision Petition.

Movement of matter is below mentioned:

Date of Receiving	Date of Forwarding	Days	Concern person	Remarks
On 11 th September 2017 the Session cum Spl. Judge, PC(WSD), Yupia, Arunachal Pradesh passed the order				
17/09/2017	07/12/2017	87 days	Head of Branch	Preparation of HoB comments after obtaining IO comments & legal opinion of Legal officer
17/12/2017	28/12/2017	22 days	Head of Zone	Preparation of HoZ comments
28/12/2017	11/01/2018	14 days	Deputy Legal Advisor Kolkata	Preparation of DLA comments
11/01/2018	22/01/2018	12 days	Head of Zone	Forwarded to Head Office
22/01/2018	24/01/2018	3 days	ADCBI	Forwarded to Legal Advisor

24/01/2018	24/01/2018	Nil	Director of Prosecution	Forwarded to ALA
24/01/2018	29/01/2018	6 days	ALA	Preparation of ALA comments
29/01/2018	13/02/2018	16 days	Director of Prosecution	Preparation of DoP comments
13/02/2018	18/02/2018	6 days	ADCBI	Preparation of ADCBI comments
18/12/2018	21/02/2018	4 days	Director	Sanction
01/03/2018			Head of Branch	Preparation of material and ground for Revision etc.

4. The respondents by filing affidavit-in-opposition, resisted the prayer for condonation of delay. The contention raised by the respondents is that the delay has not been properly explained, and in fact, no explanation has been given for the delay of about 8(eight) months from 01-03-2018 till the date of filing the revision.

5. Learned counsel for the petitioner having placed reliance on a decision of the Apex Court in State of Jharkhand-Vs- Lalu Prasad Yadav, 2017 8 SCC 1 contends, that having regard to the serious nature of the case and the official formalities required to be undertaken by the CBI in order to take a decision to file the revision, the delay of 326 days needs to be condoned, inasmuch as, there was no negligence on the part of the petitioner in preferring the revision beyond the period of limitation. On the other hand, the learned counsels representing the respondents submit that delay cannot be condoned on mere asking. Learned counsels further submit that official procedure for obtaining approval or legal opinion at various levels and for that matter movement of file cannot be considered as sufficient cause for condonation of delay. Learned counsels for the respondents submits referring to the time taken for obtaining approval from various authorities, that the petitioner took 109 days in obtaining approval from two authorities housed in the same building, which demonstrates lackadaisical attitude of the petitioner. Learned counsel refers to the following authorities to contend that the petitioner has not been able to show sufficient cause for condonation of the inordinate delay of 326 days.

1. (2012) 3 SCC 563 (Postmaster General and Ors. Vs. Living Media India Limited and Anr.).
2. (2013) 12 SCC 649 (Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.).

3. (2014) 4 NEJ 366 (Gau.) (State of Assam & Anr. Vs. Dinesh Ch. Das and Ors.).
4. 2015 (II) ILR CUT 207 (State of Orissa & Ors. Vs. Khirod Chandra Mohapatra).
5. (2019) 2 GLT 1138 (State of Arunachal Pradesh & Ors. Vs. Jumdo Jini).
6. I.A. (C) No. 69 of 2018 (Sri James Thangliana and Ors. Vs. District Collector, Aizawl and Ors.).

6. In State of Assam Vs. Dinesh Ch. Das and Ors. reported in (2014) 4 NEJ 366 (Gau.), a Division Bench of the Gauhati High Court observed that usual ground of getting administrative sanction belatedly is not a bonafide cause for condoning the delay and refused to condone the delay of 95 days. Division Bench held as under :-

"5. In our opinion, the delay of 95 days is totally unexplained. It is indeed inordinate and thus cannot be condoned for want of any sufficient cause, which is required to be made out under section 5 of the Limitation Act. Secondly, when the Act has given 60 days to file an appeal then there is absolutely no reason as to why the appellants waited for 95 days to file an appeal. Thirdly, the appellants are not rustic villagers, who are usually not conversant with the legal intricacies of limitation prescribed under the law of limitation. On the other hand, the appellants being state is always advised by the office of Advocate General on day today basis in the matter of filing cases in Courts. In our view, the usual ground that administrative sanction was not granted due to which, delay in filing appeal was caused, does not appear to us to be bonafide cause, because, no department would take 95 days to decide as to whether appeal should be filed or not against an order of Single Judge. That apart, neither proper facts are pleaded nor any documents are filed in support of such allegations, except usual averments."

7. Another Division Bench of this Court in State of Arunachal Pradesh & Ors. -Vs- Jumdo Jini(Supra), did not consider the procedural red tape of taking approval and legal opinion and intra departmental consultation a sufficient ground for condonation of delay. The Division Bench observed that --- "on going through the explanation for the delay given in paragraph-2 of the application (contents of which has already been reproduced above), we failed to see any explanation for the cause of delay, all that we see is that the applicants were looking at the anticipated benefit without even making any serious effort to hasten the process of decision making and preparation of the appeal. We have serious doubt if they are really serious about the appeal. Condonation of delay is an exception in law therefore, any applicant desiring to avail that benefit must show his or her bonafide and as repeatedly stated sufficient cause for the delay."

8. A Division Bench of Orissa High Court in State of Orissa & Ors. Vs. Khirod Chandra Mohapatra (Supra) also took the similar view and observed as under --

"9. By no stretch of imagination, it can be said that the grounds stated in the application for condonation of delay constitute sufficient cause. Merely stating that the delay was caused due to official procedure and there is no deliberate latches or wilful negligence on the part of the petitioners in not filing the Letters Patent Appeal in time is not suffice. The ground does not contain any acceptable or plausible reasons. No cause much less any sufficient cause has been shown in not filing the appeal in time."

9. This court, in Sri James Thangliana and Ors. Vs. District Collector, Aizawl(Supra), held as follows :-

"14. It may be noticed that the Apex Court in the case of Esha Bhattacharjee (supra) by appreciating various decisions of the Apex Court itself on the law of limitation adopted the ratio laid down in Balwant Singh (Dead) Vs Jagdish Singh & Ors., (2010) 8 SCC 685, wherein it was held that the law of limitation is a substantive law and has definite consequences on the right and obligation of a party to agitate his grievance. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both the parties equally.

10. In Postmaster General and Ors.(Supra), the Apex Court while refusing to condone the delay of 424 days on usual explanation that delay was caused due to procedural red tape and movement of file held as under :-

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have

reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

11. In *Esha Bhattacharjee (Supra)*, the Apex Court has culled out the following broad principles to be followed for condonation of delay :-

- i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-chalant manner requires to be curbed, of course, within legal parameters."

12. In P.K. Ramchandran -VS- State of Kerala AIR 1998 (SC) 2276, the Apex Court observed that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes, then the courts have no power to extend the period of limitation on equitable ground.

13. There is no gain saying, that the expression 'sufficient cause' appearing in section 5 of the Limitation act has to be construed liberally. However, liberal construction does not necessarily mean that one is absolved from assigning any explanation or any reason for the delay. The Apex Court time and again held that delay cannot be condoned in a casual manner, unless, the petitioner, who seeks the indulgence to file an appeal or petition beyond the statutory limit, shows sufficient cause, that he could not approach the court within time, inspite of due diligence. It is also laid down by the Apex Court, that a party, which is found to be guilty of negligence and lack of due diligence, cannot get the benefit of section 5 of the Limitation Act. In the instant case, apparently the order sought to be challenged was passed on 11-09-2017 and there was an inordinate delay of 326 days in filing the revision which has been attributed to the movement of file and intra departmental consultation. The chart given to paragraph 4 of the petition as reproduced above, shows that, from 11-09-2017 till 01-03-2018 the petitioners took 172 days to get legal opinion, approval etc. and ultimately final sanction was granted on 22-02-2019 and the head office (Head Branch) prepared the ground for revision on 1-3-18. Thereafter, the present revision petition was filed on 02-11-2018, i.e. after 8(eight) months from 1-3-18. Apparently this delay of eight months remained totally unexplained. However, it is submitted by Mr. Kato, learned counsel for the petitioner, that the aforementioned 8 (eight) months delay has been explained in paragraph 8 and 9 which reads as under :-

"8. That as the normal procedure applicable to the Govt. it take some time for approval and for other formalities for decisions to be taken at the appropriate level for which the note sheet is prepared along with all briefing documents to be forwarded under covering letter for approval of the recommended steps to be taken for further legal proceeding.

9. That thereafter the documents and brief are sent to the counsel for the Dept. who prepare the Revision Petition and sends the same for vetting & signature on the affidavit & other legal papers which caused the delay in filing the present review petition."

14. A bare reading of the above two paragraphs would show, that in those paragraphs, in fact, no explanation has been rendered. What has been stated in paragraph 8 and 9 of the petition is the repetition and summing up of the averments made in para 4 of the petition. In my considered view, even if the explanation given by the petitioner in paragraph 4 of the petition is accepted, there was no explanation at all, for the delay of 8 (eight) months, i.e., from 01-03-2018 to 02-11-2018 in filing the connected revision petition. In Esha Bhattacharjee's case the Apex Court made a distinction between inordinate delay and the delay of short duration. The Apex Court held that delay of short duration calls for liberal consideration, whereas the inordinate delay warrants strict approach, as the same attracts the doctrine of prejudice. A delay of 326 days can by no stretch of imagination be considered as short duration to receive a liberal consideration. In view of the above facts and circumstances, by no amount of liberal consideration, the explanation sought to be offered in para 4 of the petition: can be construed as sufficient cause for condonation of an inordinate delay of 326 days.

15. In State of Jharkhand -VS- Lalu Prasad Yadav (Supra) also, the Hon'ble Supreme Court, while condoning the delay of 113, 157 and 222 days respectively, in the three appeals filed by the CBI (which is also the petitioner in the present case), on the facts and circumstances of the said case, deprecated the lethargic and lackadaisical attitude of the petitioner(CBI) for causing delay in filing appeal and asked the director, CBI, to saddle the responsibility on the person concerned. The Apex Court held in para 67, 68, 69 as follows :-

"67. In view of the averments made in the application we are satisfied that delay has been sufficiently explained and considering the facts and

circumstances of the case, gravamen of matter and also the divergent views taken by the same Judge of the High Court in the same case vis-à-vis different accused persons on same question, we consider it our duty not to throw away the petition on the ground of delay. The explanation offered by the CBI of movement of file so as to condone the delay so as to subserve the ends of justice, deserves to be accepted. No doubt about it that the CBI ought to have acted with more circumspection and ought to have followed the CBI manual. It is regrettable that we are receiving majority of the special leave petitions filed in this Court barred by limitation not only on behalf of the Government but also by the other private litigants. Not only that the special leave petitions are preferred with the delay but in re-filing also enormous time is consumed and this Court in order to advance substantial justice is not throwing away cases only on limitation.

68. Sufficiency of cause has to be judged in a pragmatic manner so as to advance cause of justice. No doubt about it that litigants are supposed to act with circumspection within limitation and that there should be delay and laches and the State machinery should not be differentiated vis-à-vis with the private individual in the matter of filing the appeals, petitions, etc., however, in the facts and circumstances of the case and considering the averments in the applications, we deem it appropriate to condone the delay in filing the appeals in this Court.

69. In this case, we are surprised at the conduct of the CBI in such important matters how such delay could take place. The CBI ought to have been careful in filing the special leave petitions within limitation considering the factual matrix of the case. The criticism made by the Senior Counsel for the respondent is not wholly unjustified. CBI ought to be guided by its manual. It is expected of it to be more vigilant. It has failed to live up to its reputation. In the instant case, lethargy on its part is intolerable. If CBI fails to act timely, peoples' faith will be shaken in its effectiveness. Let the Director, CBI look into the matter and saddle the responsibility on a person concerned. In important cases the Director, CBI should devise methodology which should not be cumbersome as reflected in these cases, otherwise in future, the Director, CBI cannot escape the responsibility for delay in such cases to be termed as deliberate one, which is intolerable. Being the head of the institution it was the responsibility of the Director, CBI to ensure that appeals were filed within limitation. There should not have been delay in filing special leave petitions at all."

16. What is to be noted in the present case as indicated above is that there was an inordinate delay of 326 days. Although the petitioner sought to explain the delay for some days, i.e., upto 1-3-18, attributing the cause of delay to the movement of file and intra departmental consultation, no reason at all has been shown for the period of about eight months, which clearly demonstrates lack of seriousness and lackadaisical attitude, which can only be attributed to negligence on the part of the petitioner. What is further surprising to note is that even the caution sounded by the Apex Court in *Lalu Prasad Yadav's case* appears to have fallen in the deaf ear of the petitioner, CBI.

17. Thus, taking into account the law laid down by the Apex Court and explanation sought to be given by the petitioner in para 4 of the petition as indicated above, I am constrained to hold that this instant petition for condonation of inordinate delay of 326

days, is without merit and is accordingly, dismissed. Consequently, the Revision Petition No. 17(AP)/2018 also stands dismissed.

JUDGE

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