

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR CONDONATION OF DELAY) NO.
18394 of 2023
In F/CRIMINAL MISC.APPLICATION NO. 32154 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	YES

GUJARAT AGRO INDUSTRIES CORPORATION THRO SURESH KAMAL
 CHAUDHRI
 Versus
 STATE OF GUJARAT & ANR.

Appearance:

MS PJ DAVAWALA(240) for the Applicant(s) No. 1

MR DHARUVIN N DOSSANI(10528) for the Respondent(s) No. 2

MS ASHMITA PATEL, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
 No. 1

CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 02/09/2024

ORAL JUDGMENT

1. This application is filed under Section 5 of the Limitation Act praying to condone the delay of 460 days in filing the criminal appeal against the judgment and order of acquittal passed by the learned 4th Additional Metropolitan Magistrate, Gandhinagar in Criminal Case No.4024 of 2019 whereby the complaint came to be

dismissed for non-prosecution by exercising the power under Section 256 of the Code of Criminal Prosecution, 1973 ('the Cr.P.C.' referred hereinafter)

2. It is the case of the complainant that the complaint is filed before the learned 11th Addl. Chief Judicial Magistrate, Gandhinagar under Section 138 of the Negotiable Instruments Act, 1886 ('the N.I.Act.' referred hereinafter), which was numbered as Criminal Case no.4039 of 2019 for dishonor of the cheque for the amount of Rs.4,50,757/-. The aforesaid criminal case was filed on 17.05.2019 by the complainant, who is the Government entity. Learned trial Court has passed the impugned judgment and order of acquittal by observing that after filing the complaint, the complainant and his advocate have never remained present even for a single date. It is also observed by the learned trial Court that though notices were issued to the complainant on 21.10.2021 and on 02.12.2021 for remaining present, however, same was returned with an endorsement that no such person is found at given address. Learned trial Court after waiting for 31 months on filing of the criminal case has dismissed the complaint for non-prosecution by judgment and order dated 02.12.2021.

3. Against the aforesaid judgment and order of acquittal, an application for seeking leave to prefer an appeal as well as the appeal was filed on 01.09.2023. On filing the appeal, the Registry raised objections with regard to the delay, therefore, application for condonation of delay of

460 days was filed on 10.10.2023 which is subject matter of consideration.

4. Heard the learned advocate Ms.Parinda Davawala for the applicant and learned advocate Mr.Dhruvin Dossani for respondent No.2.

5. Ms.Davawala submits that after receipt of the order, applicant has consulted with his advocate for taking the decision whether appeal should be preferred or not and on taking decision to file appeal before the higher forum, the papers were handed over to the learned advocate for preparation of the appeal along with an application for seeking leave to prefer an appeal. It is stated in the application that the applicant being a Government Corporation, time was consumed for following the procedure and therefore, it was prayed to condone the delay.

5.1. Learned advocate Ms.Davawala has drawn attention of this Court with regard to the averments made in the affidavit-in-rejoinder to the affidavit-in-reply filed by the applicant wherein it is stated that the impugned order passed on 02.11.2021 during the COVID-19 period. It is submitted that notices which are issued by the learned trial Court could not served to the office of the Corporation, however, Officer has visited the Court many times for making inquiry in the matter, but at the relevant point of time no satisfactory reply was received. On making inquiry in the month of January

through his advocate, he was attending the matter before the lower court, learned advocate has tendered his apology stating that he did not appear before the learned trial Court and the matter was dismissed for non-prosecution. Assurance was given by the learned advocate that restoration application would be filed before the learned trial Court. It is further contended in the rejoinder that thereafter on or around 27.04.2022 the applicant received a notice from an advocate for the respondent-accused claiming damages for filing false complaint against her. On receipt of the notice, it was forwarded to the concerned advocate for appropriate reply, which was prepared and served to the learned advocate for the respondent-accused. Thereafter, further inquiries were made with regard to the case, but to the utter surprise of all concerned, it was found that the matter was dismissed for non-appearance and that fact came into the knowledge only in 2023. Thereafter, application was prepared for restoration and was handed over the notarized copy to the advocate, who was dealing with the case before the lower court. It was informed by the learned advocate that remedy is before the High Court by way of filing the appeal against the impugned judgment and order of acquittal.

5.2. It is further contended in the affidavit-in-rejoinder that again the Corporation has consulted the advocate of the High Court and the decision was taken to prefer

an appeal before the High Court on 04.05.2023. Thereafter, appeal was preferred on 26.05.2023 and the affirmation was made on 02.07.2023. At that point of time, the learned advocate has realized that certified copy is not available therefore, application for certified copy was made on 19.07.2023 and the same was delivered on 26.07.2023. Thereafter, it was given for filing to the learned advocate, at that point of time, it was informed that there is a delay in preferring the appeal therefore, application for condonation of delay is also required to be filed.

5.3. Learned advocate Ms.Davawala submits that public money which is at the stake and because of the dismissal of the complaint, fair case was suffered. Learned advocate Ms.Davawala submits that as the judgment and order of acquittal was passed on technical ground, therefore, application seeking condonation delay in preferring the application for seeking leave to prefer an appeal requires to be allowed.

6. On the other hand, this application has been vehemently opposed by the learned advocate Mr.Dossani for the respondent, who submitted that after filing the criminal case almost 930 days the applicant did not remain present and despite the notices were issued by the learned trial Court for remaining present to the complainant, the same could not be served as correct

address was also not provided before the learned trial Court. Learned advocate Mr.Dossani submits that being lackadaisical approach huge delay in absence of any satisfactory explanation may not be condoned and application may be rejected along with cost.

6.1. Learned advocate Mr.Dossani submits that merely because the applicant is Government Entity, same would not entitle with special status for which they can seek condonation of delay without offering any explanation for filing the delayed appeal. Learned advocate Mr.Dossani submits that each day delay is required to be explained with reasonable cause and in absence of sufficient cause, application for condonation of delay may be dismissed.

7. Considering the submissions made by the learned advocates for the respective parties, it appears that the criminal case which is filed before the learned trial Court for dishonour of the cheque under Section 138 of the Negotiable Instruments Act, 1886 in the year 2019 was dismissed by the learned trial Court on 02.12.2021. It is observed by the learned trial Court in the impugned judgment and order of acquittal that despite the complaint is filed on 17.05.2019 the complainant and his advocate have not remained present on a single day and twice notices were issued which were returned with an endorsement of 'complainant is not residing at given address', learned trial Court has left with no other option except to dismiss the complaint, against which the

application for seeking leave to prefer an appeal is filed along with the criminal appeal. As there was a delay of 460 days in preferring the application/appeal, application for condonation of delay is filed mainly on two grounds;

(1) The applicant is a Government Entity hence, time has been consumed to decide whether appeal is to be filed or not.

(2) Process took time for giving papers to the advocate and getting appeal filed.

8. The Apex Court in the case of ***Postmaster General and Ors. vs. Living Media India Limited and Anr.***, reported in ***1992 (3) SCC 563*** in similar facts where State Authority prayed for condonation of delay without sufficient explanation has 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.”

9. In another case where there was huge delay in preferring Letters Patent Appeal being **University of Delhi vs. Union of India and Others**, reported in **(2020) 13 SCC 745**, the Apex Court has held as under:

“24.. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a

long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.

32. Therefore, taking into consideration all these aspects of the matter, we are of the opinion that not only the learned Single Judge was justified in holding that the writ petition inter alia is hit by delay and laches but the decision of the Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for interference.”

10. Considering the law laid down by the Apex Court in the above cases, this Court is of the view that unless reasonable and acceptable explanation of delay is offered, usual explanation cannot be accepted and the

Government Departments cannot be given a special status as they are in obligation to ensure that they perform their duty with diligence and commitment.

11. So far as the reasonable explanation offered by the present applicant is concerned, only reason stated in the affidavit-in-rejoinder that the process took time for giving the papers to the learned advocate and getting the appeal filed. Averment is made in the affidavit-in-rejoinder that in January 2022 the learned advocate has conveyed that the matter is dismissed for non-prosecution as he did not remain present. Again in paragraph 5 of the affidavit-in-rejoinder it is stated that on receiving the notice in the year 2023, inquiries were made with regard to the case, but to the utter surprise it was found that the matter is dismissed for non-appearance. This averment itself is contradictory in nature as at one hand it is stated that in January 2022 the applicant came to the knowledge with regard to the dismissal of the case and on the other hand he states that in 2023 on making inquiry, he came to into the knowledge with regard to the judgment and order of acquittal.

12. The Apex Court in case of ***Sheo Raj Singh (deceased) Through LRS. And ors. Vs. Union of India and Anr.,*** reported in ***2023 (10) SCC 531*** has distinguished between an explanation and excuse as follow:

“31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an ‘explanation’ and an ‘excuse’. An ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an ‘explanation’ from an ‘excuse’. Although people tend to see ‘explanation’ and ‘excuse’ as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An ‘excuse’ is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an ‘excuse’ would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses,

and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.”

13. This Court has also considered the decision of the Apex Court rendered in the case of **Basawaraj & Anr. Vs. The Special Land Acquisition Officer**, reported in **2013 (14) SCC 81** wherein the Apex Court has held that:

“15. The law on the issue can be summarised 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 bonafide 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.”

14. This Court has also considered the case of ***P.K.Ramachandran vs. State of Kerala and Anr***, reported in **1997 (7) SCC 556** wherein the Apex Court has 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 and the Courts have no power to extend the period of limitation on equitable grounds. Only where the Court is satisfied that the explanation for delay is either reasonable or satisfactory, which is an essential pre-requisite to condonation of delay, the delay caused in filing of the appeal can be condoned and not otherwise. Explanation furnished by the applicant-appellant can hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking condonation of inordinate delay of 576 days. In the facts and circumstances of this case, I am not satisfied that any explanation, much less a reasonable or satisfactory one had been furnished by the applicant-appellant for condonation of the inordinate delay of 576 days caused in filing of the appeal.”

15. Keeping in mind the law laid down by the Apex Court, this Court is of the view that the contention made in the application as well as in the affidavit-in-rejoinder is merely an excuse not an explanation for causing delay in preferring the application for seeking leave to prefer an appeal/appeal and explanations offered in the application are too vague and cannot be said to be satisfactory or sufficient enough to condone the huge delay of 460 days. Considering the same, this application is devoid of merits and hence, the same is dismissed.

16. As the public money is under stake, therefore, this Court deems it fit to issue direction to the Corporation to recover the amount of cheque from the account of erring officer, who is responsible for causing delay after initiating the detailed inquiry and report be submitted before this Court within a period of three months from today.

M.M.MIRZA

(M. K. THAKKER,J)