

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 12.05.2022
Announced on: 21.05.2022

CRMC No.84/2018
IA No.01/2018

DR. LAHOOT HASSAN AND ANOTHER

.....Petitioner(s)

Through: Mr.Zaffar Shah, Sr. Advocate with
Mr. A.Hanan, Advocate

V/s

**STATE OF J&K THROUGH SHO P/S VIGILANCE ORGANIZATION
KASHMIR**

..... Respondent(s)

Through: Ms. Asifa Padroo, AAG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

21.05.2022

1. The petitioners have challenged order dated 21.02.2018 passed by learned Additional Sessions Judge, Srinagar, whereby, delay in filing the appeal against the judgment and order dated 05.06.2014 passed by learned Chief Judicial Magistrate, Srinagar has been condoned.
2. It appears that a challan emanating from FIR No.VOK15/1996 for offences under Sections 420, 468, 471 read with 120-B RPC of Police Station VOK Srinagar was filed before the Court of Chief Judicial Magistrate Srinagar. After trial of the case, the learned Chief Judicial Magistrate, vide his judgment and order dated 05.06.2014, acquitted the petitioners of the charges for offences under Sections 420, 468, 471 and 120-B RPC. The said judgment

was assailed by the respondent herein by way of an appeal before the Court of learned Additional Sessions Judge, Srinagar. The appeal was filed before the Appellate Court on 06.06.2016 i.e after a delay of about one year and 9 months. Alongwith the appeal, the respondent moved an application before the learned Appellate Court seeking condonation of delay in filing the appeal, primarily on the grounds that due to the devastating floods of September, 2014 the case diary and other related record pertaining to the matter got damaged which prevented the appellant from filing the appeal within the prescribed period of limitation. The learned Appellate Court vide its impugned order dated 21.02.2018 accepted the cause shown by the respondent as sufficient and accordingly condoned the delay in filing the appeal against the judgment of the acquittal passed by learned Chief Judicial Magistrate, Srinagar. It is this order of the Appellate Court which is under challenge in these proceedings.

3. It has been contended by the petitioners that delay in filing an appeal on account of administrative reasons is not a sufficient cause within the meaning of Section 5 of the Limitation Act. It is further contended that even after grant of sanction for filing of the appeal on 20.07.2015, it took almost one year for the respondent to file the appeal and the delay in this regard has remained unexplained. It has been further contended that after the devastating floods of September, 2014, all the Courts including, the High Court started functioning in the month of October, 2014, as such, there was no reason for the respondent to file the appeal belatedly. It is also

contended that there is no explanation tendered by the respondent as to why it took seven months to issue 2nd sanction order in favour of the Public Prosecutor and there is no explanation for the delay in filing the appeal after the grant of 2nd sanction order on 19.02.2016. According to the petitioners all these aspects of the matter have been ignored by the learned Appellate Court while passing the impugned order.

4. I have heard learned counsel for the parties and perused the material on record including the record of the Appellate Court.
5. Section 5 of the Limitation Act provides for extension of prescribed period in certain cases. As per this provision, an appeal may be admitted after the prescribed period of limitation if the appellant satisfies the Court that he had a sufficient cause for not preferring the appeal within such period. The expression “sufficient cause” has been the subject matter of interpretation in several judgments and by now it is well settled that the aforesaid expression must receive a liberal construction so as to advance substantial justice and unless there is gross negligence or deliberate inaction or lack of bonafides attributable to the parties seeking condonation of delay, such a prayer should not be declined.
6. In the instant case, the party seeking condonation of delay in filing the appeal is a Government functionary. It is correct that law of limitation binds everybody including the Government but certain amount of leniency and leeway has been given by the Courts in the

matter of condoning of delay when the party seeking condonation of delay happens to be a Government Department. This is so, because of the peculiar functioning of Government departments where files move from one table to another and the decision making by very nature of the functioning of the bureaucracy takes a long time. The Supreme Court in the case of ***Special Tehsildar Land Acquisition, Keral v. K. V. Ayisumma***, (1996) 10 SCC 634, while dealing with a case where condonation of delay in filing of appeal was sought by Government, discussed the manner in which Government business is transacted and advocated liberal approach in the matter of condonation of delay in such cases. The observations of the Court which are relevant to the context are reproduced as under:

“It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay. The transaction of the business of the Government being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice, it would result in public mischief by skillful management of delay in the process of filing the appeal. The approach of the Court would be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned.”

7. In ***G. Ramegowda Major and ors. Vs. Special Land Acquisition***

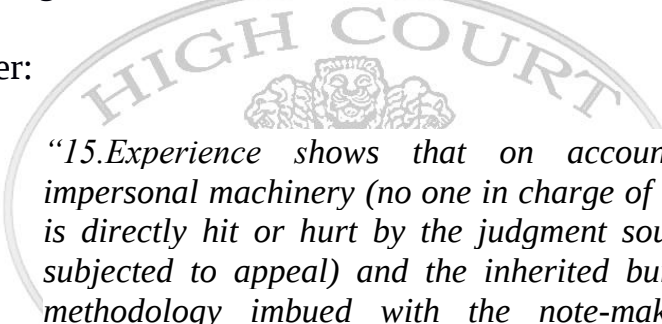
officer, Bangalore, AIR 1988 SC 897, the Supreme Court, while noting that Government and private individual cannot be equated in matters relating to condonation of delay, observed as under:

“no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the

decision-making process. The delay of over one year was accordingly condoned.”

8. Again, in ***State of Nagaland v. Lipok AO and others***, AIR 2005 SC

2191, the Supreme Court after noticing the manner in which the Government offices function, advocated a justice oriented approach in dealing with matters pertaining to condonation of delay. Para 15 of the judgment is relevant to the context and the same is reproduced as under:



“15.Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on- the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grate status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Smt. Prabha v. Ram Parkash Kalra (1987 Supp SCC 339), this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.”

9. From the foregoing analysis of the law on the subject, it becomes manifest that expression “sufficient cause” has to be given liberal construction and the Courts while considering the delay in filing appeal have to avoid technicalities so that merit is preferred and scuttling of decision on merits is avoided. The Courts have to adopt a justice-oriented approach, particularly while dealing with the cases

where delay is sought to be condoned at the instance of Government functionaries. The Courts have to be guided by spirit and philosophy that State represents collective cause of the community and cannot be equated with an ordinary litigant. Unless there is gross negligent approach of the Government functionaries in dealing with a matter, the Courts would lean in favour of condoning the delay without insisting upon explanation of each day's delay.

10.Coming to the facts of the instant case, it appears from the record that the respondent/appellant immediately after the judgment of acquittal was delivered by the Chief Judicial Magistrate Srinagar, applied for its certified copy. The record shows that an application for grant of certified copy was filed by the respondent before the trial Court on 05.06.2014 and it was delivered on 14.06.2014.

11.Sub Section (2) of Section 12 of Limitation Act provides for exclusion of the time requisite for obtaining a copy of the order appealed from. Therefore, the time period from 5th June to 14th June, 2014 has to be excluded while computing the period of limitation in the instant case. Thus, the period of limitation for filing of appeal against the judgment of acquittal dated 05.06.2014 passed by the Chief Judicial Magistrate Srinagar would start running from 15th June, 2014 and it would expire on 12th September, 2014.

12.Learned Sr. Counsel appearing for the petitioners has vehemently contended that while seeking condonation of delay in filing the appeal, the appellant is required to explain his conduct before the

limitation expired and it has to show that there was sufficient cause as a result of which it was not possible to file the appeal within the time. It is contended that no event or circumstance arising after the expiry of limitation can constitute sufficient cause.

13. There can be no quarrel with the proposition of law that when a party allows limitation to expire and does not plead sufficient cause for not filing the appeal within the period of limitation, the delay in filing the appeal cannot be condoned but then it is an equally correct and settled proposition of law that a party is entitled to wait until the last date of limitation for filing an appeal. I am supported in my aforesaid view by the ratio laid down by Supreme Court in the case of **Ram Lal, Moti Lal and Chhote Lal vs. Rewa Coal Fields Ltd.** In the said case the Court while interpreting the provisions of Section 5 of the Limitation Act, particularly the words “within such period” occurring in the aforesaid provision, observed as under:-

“Now, what do the words "within such period" denote? It is possible that the expression “within such period” may sometimes mean during such period. But the question is: Does the context in which the expression occurs in Section 5 justify the said interpretation? If the Limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which Section 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period; and so prime facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the

whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of Section 5. The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression "within such period" means during such period would, in our opinion, be repugnant in the context. We would accordingly hold that the learned Judicial Commissioner was in error taking the view that the failure of the appellant to account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness.

14. Again the Supreme Court in the case of ***Ajit Singh Thakur Singh and Another vs. State of Gujarat (1981) 1 SCC 495*** has held that the party is entitled to wait until the last day of limitation for filing the appeal and if it allows the limitation to expire and pleads sufficient cause for not filing the appeal, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time.
15. Now coming to the facts of the instant case, as already noted, limitation period for filing the appeal against the judgment of the learned Chief Judicial Magistrate has expired on 12th September, 2014. It is an admitted fact that in the first week of September, 2014

devasting floods engulfed the whole of the Kashmir Valley, particularly the Srinagar city. Due to the flood waters, records of several Government offices, the High Court and the trial Courts located in the vicinity of Srinagar were extensively damaged. The aforesaid event occurred well before the expiry of period of limitation for filing the appeal. Thus the contention of learned senior counsel appearing for the petitioners that the circumstances that have been pleaded by the appellant while seeking condonation of delay were pertaining to a period prior to expiry of period of limitation, is not factually correct. Thus, the respondent/appellant was entitled to plead and establish that due to the floods of 2014 the appeal could not be filed within the prescribed period of limitation, as the said event had taken place while the period of limitation for filing the appeal had not expired.

16.It has been pleaded by the respondent/appellant before the Appellate Court that the record was damaged and the same had to be reconstructed which did took some time and besides this, even the Courts were not properly functioning for a number of months. These are the facts which nobody can deny. It has been contended by the respondent before the Appellate Court that sanction for filing of appeal was granted in favour of the first Public Prosecutor on 20.07.2015 but the said Public Prosecutor could not file the appeal because he was removed from his office. It has also been contended by the respondent/appellant before the Appellate Court that after the appointment of the new Public Prosecutor the sanction for filing of

the appeal was accorded in his favour on 19.02.2016. Learned counsel for the respondent has contended that for a certain period of time the office of the Public Prosecutor in the Court of Additional Sessions Judge Srinagar remained vacant which resulted in delay in granting of sanction in favour of the new Public Prosecutor. After the grant of sanction in favour of the new Public Prosecutor on 19.02.2016, the appeal was ultimately filed on 06.06.2016.

17. It has been contended by learned senior counsel appearing for the petitioners that there is no explanation for the period between 19.02.2016 and 06.06.2016. It is true that in the application for condonation of delay filed by the respondent/appellant before the Appellate Court no specific reason has been given for not filing the appeal until 06.06.2016 even after grant of sanction on 19.02.2016. However, we have to take into account the fact that after grant of sanction for filing of appeal, it must have taken the Public Prosecutor certain amount of time to study the relevant material and prepare the appeal. It is not forthcoming from the record as to how much time has been consumed by the Prosecutor to undertake this exercise but then it is not necessary for the appellant to explain each day's delay. As already discussed, expression "sufficient cause" has to be given liberal construction and the Courts have to adopt justice oriented approach, particularly while dealing with the cases where delay is sought to be condoned in the cases related to Government functionaries. The material on record does not suggest that there has been any intentional or gross negligence on the part of the

respondent or its functionaries in dealing with the matter, as such, this Court would lean in favour of condoning the delay without insisting upon explanation to each day's delay.

18. Apart from the above, the power to condone the delay in filing the appeal vested with an Appellate Court in terms of provisions contained in Section 5 of the Limitation Act is discretionary in nature. Unless discretion exercised by the Appellate Court in condoning the delay is based upon irrelevant considerations or is patently illegal, the High Court in exercise of its jurisdiction under Section 482 of CrPC would be reluctant to interfere in the exercise of such discretion by the Appellate Court. In the instant case the discretion exercised by the Appellate Court in condoning the delay in filing the acquittal appeal is neither based upon irrelevant materials nor the same is perverse in nature. Therefore, the order impugned does not call for any interference from this Court

19. For the foregoing reasons the petition is dismissed being without any merit. Copy of this order be sent to the Appellate Court.

(SANJAY DHAR)
JUDGE

SRINAGAR
21.05.2022
Sarveeda Nissar

Whether the order is speaking: Yes
Whether the order is reportable: Yes