

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL MISC. APPLICATION NO.29 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.109 OF
2024(F)**

STATE OF GOA THROUGH I.O./PSIAPPLICANT
Versus
BHARAT AMBUDIPUDI
AND 3 OTHERSRESPONDENTS

Mr. Somnath Karpe, Additional Public Prosecutor for the Applicant-State.

Mr. Omkar Kulkarni, Advocate for the Respondents.

CORAM: BHARAT P. DESHPANDE, J

RESERVED ON: 12th August, 2024.

PRONOUNCED ON: 19th September, 2024

O R D E R :

1. This is an application for condonation of delay in filing of criminal revision application, thereby challenging the impugned order dated 01/09/2023.

2. Mr. Karpe would submit that though it is mentioned that the delay is of 76 days, infact the actual delay is of only 46 days.

He would further submit that the impugned order was passed on 01/09/2023, thereby discharging the Respondents in a NDPS case. The certified copy was applied immediately, which was received on 04/09/2023. The office of Superintendent of Police North Goa vide its letter dated 09/10/2023, requested the Director of Prosecution to, prefer an appeal/revision. The Director of Prosecution then forwarded its opinion to the Government/Home Department, which was approved and then forwarded to the Office of learned Advocate General for drafting the revision.

3. Mr. Karpe, learned Additional Public Prosecutor would submit that somewhere in the month of November 2023, a file was received in the office of the Advocate General and it was allotted to him, however, since he was not available during the Diwali vacation, there was some delay. He, therefore, would submit that after, the meeting was conducted with the Investigating Officer, copies of charge sheet were called along with other documents which were received somewhere in the third week of December. The draft was prepared and forwarded for approval. The revision was thereafter filed on the e-filing

Portal on 19/01/2024. He would therefore submit that the delay is only of 47 days which has been properly explained.

4. Per contra, Mr Kulkarni would submit that an application and the reasons disclosed therein are very casual and there is no proper and sufficient cause disclosed in the application. He would submit that the office records show that the e-filing was done only on 29/01/2024 and not on 19/01/2024. He claimed that since the opinion was received in the matter, and was forwarded to the office of learned Advocate General in the month of November itself, the delay has not been properly explained.

5. In this matter, after the arguments were heard, and the matter was reserved for orders, an additional affidavit is filed by Applicant disclosing that the matter was filed on the e-filing Portal on 19/01/2024 though it is now showing a filing date as 29/01/2024. The Respondent by filing an additional affidavit is now claiming that the Applicant is trying to mislead this Court by filing a false affidavit and therefore, the Applicant is not entitled for the relief claim therein. The Respondent along with

additional reply, placed on record the case status wherein the date of filing is shown as 29/01/2024.

6. The record, goes to show that there is a note of the Office with handwritten contents therein. It shows a specific number along with the date which reads thus:-

“EC–HCB-M05-00093–2024 dated 19/01/2024
11:53:02 am”

7. There is also a signature and date of the Assistant Register, showing the date as 23/01/2024, while notifying office objections.

8. In view of the said note and the discrepancy with regard to the date of filing on the CIS portal as 29/01/2024, the Registry was asked to clarify since the note shows the date as 19/01/2024, as well as Assistant Registrar notifying the objections on 23/01/2024, which is admittedly prior to 29/01/2024.

9. The Registry has now clarified vide its note dated 17/09/2024, that the matter was infact, e-filed on 19/01/2024, by the Applicant, however, at the relevant time, the procedure

adopted by the Registry is to consider such e-filing and raised technical objections, if any. For that purpose, a separate note is issued, which is appended to the file with handwritten notings. The e-filing number is also noted on the said note which is already quoted above and the date as 19/01/2024.

10. The Registry then clarified that only after technical objections are cleared, the matter is thereafter consumed in the CIS system and such date of consuming the matter is noted as date of filing in the CIS.

11. The Registry also placed on record the e-filing logs at Flag 'A' alongwith its note which shows that the actual date of e-filing is 19/01/2024 which was consumed in the CIS only on 29/01/2024.

12. Thus, with this clarification and the documents placed by the Registry, it is clear that the actual date of filing by e-mode is 19/01/2024 and not 29/01/2024.

13. The short issue is whether there is sufficient ground to condone the delay in filing revision as now the delay is only of 47 days.

14. The Applicant has placed on record the opinion of the Director of Prosecution dated 13/10/2023 which shows that the process was initiated by the Superintendent of Police on 09/10/2023 itself. The Director of Prosecution opined on 13/10/2023 that it is a fit case to file a revision and observed that the period of limitation would expire somewhere on 03/11/2023. The said opinion was then forwarded to the Home Department.

15. The Applicant has then produced the letter from the Department of Home (General) dated 17/11/2023 which was received by the office of the Director of Prosecution on 20/11/2023. The Department of Home conveyed its sanction to prefer a revision against the impugned order.

16. The Director of Prosecution vide its letter dated 21/11/2023 requested the office of learned Advocate General to prefer revision. There is a note on 21/11/2023 itself that the Advocate Karpe may be appointed to draft the revision.

17. The application for condonation of delay therefore shows that the matter was actually handed over to Mr. Karpe. However, since he was not available due to Diwali Vacations, the

first meeting between the Investigating Officer and Advocate Karpe was fixed somewhere in second week of December 2023. Since, the charge sheet and other documents were required which were handed over somewhere in the third week of 2023, the draft was then prepared and circulated for approval. After finalisation of the said draft, it was e-filed on 19/01/2024, delayed by 47 days.

18. It is no doubt true that the main application for condonation of delay did not disclose all minute details except the fact that the file was received from the Director of Prosecution somewhere in the last week of November 2023. However, an additional affidavit filed by the Investigating Officer/Applicant would clarify all these aspect including the actual date of filing as 19/01/2024.

19. With this background, the reply affidavit filed by the Respondent along with an additional reply affidavit needs to be taken into account.

20. Admittedly, the application is filed on behalf of the Investigating Officer through the office of learned Public Prosecutor for and on behalf of the State.

21. It is well settled that the application for condonation of delay filed by the State or its instrumentalities has to be considered in the same manner as that of a normal litigant. However, it is also a settled proposition of law that sufficient cause has to be construed liberally. As far as the State is concerned, the Court must take into account the procedure of approval of the file on stage to stage basis together with the movement of the file from the concerned authorities.

22. It is no doubt true that once the period of limitation is over, a valuable right accrues in favour of the other party which should not lightly be defeated in a routine manner, however, if the cause disclosed in the application is found to be sufficient, without any malafide and due to the procedural aspects, the same could be considered for condoning the delay.

23. In the case of ***Mahanagar Telephone Nigam Limited Vs. State of Maharashtra, (2013) 9 SCC 92***, the Apex Court was dealing with filing of an SLP and condoning the unexplained delay with concealment of material facts as well as misleading statements. The Apex Court discussed as to what constitutes sufficient cause for the purpose of condoning the

delay. The observations of the Apex Court in the above case are clearly distinguishable as there is no suppression of facts in the present matter or even misleading statements. The Respondents are saying so because the CIS Portal shows the date of filing as 29/01/2024 though additional affidavit shows that it was actually e-filed on 19/01/2024. However, with the clarification from the Registry and the documents placed on record would clearly go to show that the matter was infact e-filed on 19/01/2024 and thus there is no misleading statement on behalf of the Applicant.

24. In the case of ***Postmaster General and Others Vs. Living Media India Limited, (2012) 3 SCC 563***, the Apex Court discussed the aspect of sufficient cause and then observed in paragraph 29 as under:

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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

25. Reliance is also placed on the case of **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114** for the proposition that the litigant who is dishonest and suppressing material facts should not be entertained as it would be abuse of process of law. This proposition is relied upon by the Respondent only on the ground that CIS shows filing date as 29/01/2024 whereas additional affidavit filed by the Applicant shows e filing date as 19/01/2024. However, since it is already clarified that actually the matte was e-filed on 19/01/2024, the said decision will not be of any help to the Respondent.

26. In the case of **State of Haryana Vs. Chandramani and others, (1996) 3 SCC 132**, the Apex Court while dealing

with Section 5 of the Limitation Act observed in paragraph 11 as under:-

11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State- are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-

tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be

pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.

27. In the case of **N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123**, the Apex Court has observed that Rules of Limitation are not meant to destroy the rights of the parties but to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Since the lifespan is fixed for each remedy, the remedy must be preferred within such time, however, refusal to condone delay in

a genuine case wherein sufficient cause is disclosed would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. However, that alone is not enough to turn down his plea and to shut the door against him. When the explanation does not smack of malafides or it is not put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. However, when there is a reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation.

28. There is no need to consider other decisions cited by the parties, since it is now well-settled proposition of law that even if the State is the Applicant, it must show sufficient cause for condonation of delay.

29. The matter in hand would go to show that the impugned order of discharging all the Respondents from the offences under Section 22 (b) and Section 29 of the NDPS Act was passed

on 01/09/2023. The application for a certified copy was moved immediately and it was delivered on 04/09/2023. The office of the Superintendent of Police vide its letter dated 09/10/2023 sought an opinion from the Director of Prosecution requesting to prefer revision.

30. Vide opinion dated 13/10/2023, the Director of Prosecution opined that it is a fit case to file revision and marked the file to the Department of Home (General). Vide letter dated 17/11/2023, addressed to the Directorate of Prosecution, Under-Secretary, conveyed sanction of the Government to prefer revision. Accordingly, the Directorate of Prosecution vide its letter dated 21/11/2023 forwarded the file along with the opinion of the Government to the office of the learned Advocate General. The remark of the learned Advocate General shows that Advocate Somnath Karpe be appointed in the matter. Accordingly, file was allotted to Advocate Somnath Karpe who is the Additional Public Prosecutor for the State.

31. The application for condonation of delay would show that Mr. Karpe was not available due to Diwali Vacation and the first meeting with the Investigating Officer was fixed somewhere in

the Second week of December. After handing over the copies of the charge sheet and other relevant papers, the draft of the revision was prepared and forwarded for approval and thereafter, the matter was e-filed on 19/01/2024. Thus, the delay is of 47 days. The affidavit filed by the Investigating Officer clearly goes to show that an explanation for filing the revision beyond the period of limitation is sufficiently disclosed. It is well settled, that the Applicant is not required to give an explanation of each day's delay. Therefore, the application along with the additional affidavit would constitute sufficient cause for the purpose of condoning delay. Accordingly, the application needs to be allowed.

32. The application stands allowed. The delay stands condoned.

33. The application stands disposed of in above terms.

BHARAT P. DESHPANDE, J.