IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.253 OF 2019
IN
STAMP NUMBER MAIN NO.1342 OF 2019 (FILING NO.)

The Income Tax Department .....Applicant
Represented by its Asst. Commissioner
of Income Tax, Circle – 2(1), Panaji, 1st Floor,
Aayakar Bhavan, EDC Complex, Patto,
Panaji- Goa.

v/s.

Sri. Dattaraj Vassudeva Salgaoncar,
Salgaoncar House,
Dr. F.L. Gomes Road,
Vasco-Da Gama,
Goa. .....Respondent

Ms. Amira Razaq, Standing Counsel for the Applicant.

Mr. Vikram Nankani, Senior Advocate with Mr. R. Badlani, Mr. Sumeet Nankani and Mr. S. Nasnolkar, Advocate for the Respondent.

CORAM: **BHARAT P. DESHPANDE, J**

RESERVED ON: **25th July, 2024.**

PRONOUNCED ON: **12th August, 2024.**

O R D E R :

1. This is an application filed for condonation of delay in filing an application for special leave to appeal, is taken up for final disposal.

2. Heard Ms. Amira Razaq, learned Standing Counsel for the Applicant and Mr. Vikram Nankani, learned Senior Advocate with Mr. R. Badlani, Mr. Sumeet Nankani and Mr. S. Nasnolkar, learned Counsel for the Respondent.

3. The Applicant is the Assistant Commissioner of Income Tax, preferred present application for condonation of delay of 480days in filing leave to appeal thereby challenging the order dated 07/10/2017 passed by the learned Magistrate at Vasco in dismissing the complaint in default and acquitting the Applicant/Accused.

4. Ms Razaq would submit that a complaint was lodged before the learned Magistrate which was registered as CR Case No. AOA/415/INC-TAX/2017 for the offence punishable under Sections 277 and 277A of the Income Tax Act against the Respondent/Accused. The process was issued against the Accused/Respondent and accordingly the matter was posted for hearing arguments. However, an order was passed on 17/10/2017 by the learned Magistrate dismissing the said complaint and acquitting the Accused since neither the Complainant nor Advocate for the Complainant appeared before

the said Court. The learned Magistrate proceeded under Section 256 of the CrPC while dismissing the complaint and acquitting the Accused.

5. Ms Razaq would submit that the Applicant on a legal advice and bonafidely believing that the revision is maintainable, approach the learned Sessions Court by filing a revision and that too within limitation. The Respondent appeared and raised objections regarding maintainability of the said revision on the ground that since the Respondent was acquitted the remedy available is only by filing appeal and not by revision.

6. The learned Counsel appearing before the trial Court then intimated the Department about the said objection and also opined that the appeal is required to be filled. Accordingly, the papers were called out from the concern Advocate and there after decision was taken to file appeal before the Court however since there is a delay, an application is filed for condoning the delay for filing an application for special leave to appeal.

7. Ms Razaq would submit that revision was filed within time and once it was observed that revision is not maintainable steps

were taken to file an appeal along with the delay application and only thereafter the revision file before the District Court was withdrawn. She would submit that the reasons for delay are disclosed in the application which are clearly disclosing sufficient cause and exercise of due diligence. She submits that some time was consumed for the purpose of processing of the file and since the Applicant is the Department , the decision was required to be taken by the competent authority for the purpose of filing an appeal and withdrawal of the revision. The application is filed on affidavit of the concerned officer which clearly goes to show that revision was filed with a bonafide belief and on the instructions of the concerned Standing Counsel but since the objections were raised, the matter was re-examined and accordingly appeal is filed along with the present application.

8. Ms Razaq would submit that there is no deliberate attempt on the part of the Applicant to file the appeal after the period of limitation however the circumstances were such that the Applicant was under the bonafide belief that the remedy against impugned order was before the Sessions Court by filing a revision. She submits that the Applicant is having a good case

on merits and if a delay is not condoned the Applicant will not be able to pursue the matter as the Complainant failed to appear before the learned Magistrate.

9. Ms Razaq placed reliance on the following decisions:

Director of Income Tax (International Taxation) v/s. Western Union Financial Services Inc. [2023] 153 taxmann.com 704 (SC)

10. *Per Contra*, Mr Nankani would submit that the argument raised are beyond pleadings and no provisions have been cited in the application. He submits that the application for condonation of delay is filed in a casual manner, contains vague statements and nowhere discloses sufficient cause. He would further submits that the pleadings with regard to sufficient cause must be precise and give the relevant details which are missing in the present application.

11. Mr Nankani would further submit that the order of the JMFC is dated 07/10/2017 whereas the revision was filed on 15/11/2017. There is no statement in the entire application that such revision was filed on a wrong advice. There are no details

including the dates above the notes of the concerned Officer of the Department while processing the file.

12. Mr Nankani would submit that only because the Respondent raised objection to the tenability of revision would not in any manner give any opportunity to the Applicant to rethink about the maintainability of such proceeding. He would submit that when there is a statutory bar on filing any revision against order of acquittal pursuing such remedy would not in any manner give any reason for the Applicant to seek for condonation of delay. He submitted that when the remedy of revision was itself barred by statute and more particularly Section 401 (4) of CrPC the contention of the Applicant that he was bonafidely pursuing such remedy is itself not tenable.

13. Mr Nankani would submit that the reasons that the Applicant was waiting for the records is again a lame excuse as the entire record was with the Standing Counsel and inordinate delay of 5 months for submitting such record and thereafter consuming time of 2 months without any explanation cannot be construed sufficient cause. He submits that the application along with the appeal was presented before this Court on

01/04/2019 and there is absolutely no sufficient cause to condone such delay. He would submit that in criminal matters the Applicant ought to have shown seriousness in contesting the matter so also filing of the proceeding in case of adverse orders. He submits that a valuable right accrued in favour of the Respondent who was acquitted by the learned Magistrate and therefore such valuable right cannot be taken away lightly and casually.

14. Mr Nankani would submit that mere filing of the revision before the District Court is not a good ground as ignorance of law cannot be an excuse. Besides he would submit that there are no pleadings about wrong advice given by the Standing Counsel for the purpose of filing a revision.

15. Mr Nankani placed reliance on the following decisions:

Set I

Maqbul Ahmad vs Onkar Pratap Narain Singh [AIR 1935 PC 85], **State of Maharashtra v. Vithu Kalya Govari** [2008 (6) Mah. LJ 239], **Lanka Venkateshwarlu vs State of Andhra Pradesh & Ors.** [(2011) 4 SCC 363], **Postmaster**

General and Ors. vs Living Media India Ltd and Anr [(2012) 3 SCC 563], **Amalendu Kumar Bera and Ors. vs State of West Bengal** [(2013) 4 SCC 52], **Basawaraj & Anr. Vs Special Land Acquisition Officer** [(2013) 14 SCC 81], **Popat Bahiru Govardhane v. Land Acquisition Officer**] (2013) 10 SCC 765], **Chandrakant v. State of Maharashtra** [2014 SCC OnLine Bom 367], **Brijesh Kumar & Ors. vs State of Haryana & Ors.** [(2014) 11 SCC 351], **Addl. Commr. of Sales Tax v. Kayani Bakery** [2016 SCC OnLine Bom 5121], **State of Maharashtra v. Jasodabai** [2017 SCC Online Bom 6528], **State of MP and Anr. vs Chaitram Maywade** [(2020) 10 SCC 667], **Govt of Maharashtra vs Borse Brothers Engineers and Contractors Pvt Ltd** [(2021) 6 SCC 460], **Lingeswaran v. Thirunagalingam** [2022 SCC OnLine SC 2233] and **Pathapati Subba Reddy vs LAO** [2024 SCC OnLine SC 513].

Set II

Ketan V. Parekh v. Enforcement Directorate (2011) 15 SCC 30, **Bharat Electronics Ltd. v. IBEX Integrated Business Express (P) Ltd.** 2023 SCC OnLine Bom 2776,

Deena v. Bharat Singh (2002) 6 SCC 336, **Rabindra Nath Samuel Dawson v. Sivakasi** (1973) 3 SCC 381, **Management of Associated Industries Ltd. v. Bipin Behari Singh**[1971 SCC OnLine Gau 51], **Radhe Shyam Khemka v. Raju Yadav** [2020 SCC OnLine Chh 879], **Radheshaym Mohanlal Kaitan v. Maharashtra Revenue Tribunal** [1969 SCC OnLine Bom 7], **Sakhichand Sahu v. Ishwar Dayal Sahu**[1966 SCC OnLine Pat 111], **Paras Ram v. Sheoji Ram**[2010 SCC OnLine Del 1683].

Set III

The State of Mysore Vs. Laxman Sharanappa Shiraguppi & Anr. [(1964) SCC Online Kar 55], **Ajit Singh Thakur Singh & Anr. Vs. State of Gujarat** [(1981) 1 Supreme Court Cases 495], **Municipal Corporation of Delhi Vs. Amrit Lal** [1980 SCC Online Del 304], **V. Gopalkrishnan Nair, Assistant Commissioner of Income-Tax v/s/ Babarao Narhari Keshtwar and Another** [1992 Mh.L.J.742], **The State vs. Shri Mohammed Tahir** [2018 SCC Online Cal 213]

16. In rejoinder, Ms. Razaq would submit that the matter pertains to the Income Tax Act and therefore it involves public interest. She submits that filing of revision itself within limitation shows a due diligence and bonafide attempt on the part of the Applicant to challenge the impugned order and amounts to sufficient cause.

17. After considering the rival contentions and the decisions cited as disclosed about, the point for determination is whether sufficient cause is disclosed by the Applicant to condone the delay of 480 days in filing the appeal?

18. Various decisions have been cited on behalf of the Respondents however the ratio in most of the decisions would constitute sufficient cause for the purpose of condoning delay. It is also discretion of the Court which has to be exercised judiciously based upon the facts and circumstances of each case. Sufficient cause cannot be liberally interpreted if negligence, inaction or lack of bona fide is attributed to the party. Similarly the Courts do not have power to extend period of limitation based on equitable grounds. If the party is involved in negligence, lack of bonafide or in action then there cannot be

any justified ground for condoning the delay. It is also held in most of the decisions that each application for condonation of delay will have to be decided within the framework as laid down by the Apex Court. The distinction between “sufficient cause” and “good cause” is explain in the case of **Basawaraj**(supra) wherein the Apex Court held that sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. The word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The

Applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

19. In the case of **Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors** (1987 (2) SCC 107), the Apex Court observed that:

> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

20. The matter in hand would clearly go to show that the complaint filed under Section 200 CrPC by the Officer of the Income Tax Department for the offences punishable under Section 277 and 277A of the Income Tax Act came to be dismissed for non-appearance of the complainant and his Advocate and accordingly the order is that the respondent/accused is acquitted.

21. It is also admitted fact that while challenging the said order, a revision under Section 397 under CrPC was filed before the learned Sessions Court.

22. Mr Nankani heavily relied upon the provisions of Section 401(4) of CrPC to buttress his submissions that where an appeal is provided but no such appeal is filed, the proceeding by way of revision shall not to entertained.

23. At this stage, it is necessary to note that revision under Section 397 of CRPC was filed before the Sessions Court wherein there is no mention of any provision as found in section 401(4) of CrPC. Though the powers under section 397 of CrPC could be exercised by High Court as well as by the Sessions Court, such powers could be exercised only for the purpose of satisfying itself as to the correctness or illegality or propriety or for final sentence or order passed by the Courts below however no such revision could be entertained against any interlocutory order.

24. Section 401 of CrPC specifically deals with the powers of revision of High Court wherein sub-Section 4 deals with the aspect where under the Code an appeal lies and no appeal is

brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

25. Thus when the revision was filed before the Sessions Court under Section 397 of CrPC, the provision of section 401(4) of CrPC cannot be made applicable to it. Section 397 of CrPC nowhere contains as provided in sub Section 4 of section 401 of CrPC. That apart, the fact remains that such revision was admittedly filed within time of limitation.

26. The appeal under Section 378 of CrPC is required to be filed within a period of 6 months along with leave to file appeal as provided under sub Section 4 of section 378.

27. The revision under Section 397 of CrPC was filed on 15/11/2017 thereby challenging the order of the Magistrate dated 07/10/2017. Thus, it is clear that the Applicant bonafidely believing that revision lies against the impugned order, filed it within the limitation, as provided under section 378(5) of CrPC for filing appeal.

28. The application filed for condonation of delay before this Court which is supported by the affidavit of the Assistant

Commissioner of Income Tax would clearly reveal in paragraph No.2 that the Applicant bonafidely preferred criminal revision challenging the impugned order dated 07/10/2017 as the complaint was dismissed for default of appearance of the complainant and his Counsel. Thus when revision is filed under Section 397, the contention of Mr Nankani that such revision was statutorily barred under section 401(4) of CrPC, will have to be rejected firstly that such revision was not filed under section 401 of CrPC but was filed under section 397 of CrPC wherein the legislature did not think it fit to include the contents of sub-section 4 of section 401 of CrPC.

29. The application for condonation of delay would then state that notices were issued to the respondents who appeared before the Sessions Court and raised the objection that revision is not maintainable since the order of the Magistrate is clear thereby acquitting the accused. The contention of Respondent is that when there is acquittal order passed, the only option is to file an appeal under section 378 of CrPC.

30. The Applicant further discussed in the application that since objections were raised by the respondent, the special

public prosecutor appearing for the Applicant intimated the Department about the objections raised and accordingly was requested to provide the copies of relevant records. It also shows that the special public prosecutor appearing for the Applicant furnished part of the copies of records to the Department on 04/01/2019 whereas the remaining copies of the records pertaining to the Court of JMFC were provided on 15/03/2019. Immediately thereafter the Standing Counsel for the Department was provided with records and was requested to draft an appeal together with an application for leave to appeal.

31. The application further disclosed that the Standing Counsel for the Department submitted the drafts by e-mail on 30/03/2019 and after due approval the present application along with the appeal and leave to appeal was filed on 01/04/2019.

32. The Applicant would then state in paragraph 5 that revision was filed before the Sessions Court with a bonafide belief and only after objection raised by the respondent, the matter was examined and only thereafter the decision was taken to prefer the present appeal. It is also stated that only after filing

of the present application for condonation of delay with the appeal and leave to appeal, the revision file before the Sessions Court was withdrawn. The Applicant claimed that the delay was only because of the fact that the revision was filed with the bonafide belief and only after objections, steps were taken to file the appeal.

33. Mr. Nankani, appearing for the respondent, forcefully submitted that only because objections were raised about the maintainability of the revision would not in any manner necessary to consider the opportunity for the Applicant to rethink. He submits that ignorance of law cannot be considered as ground for condoning the delay. Though he claims that there is statutory power under section 401(4) of CrPC, such an aspect is already discussed and cannot be accepted. However it is admitted fact that the revision was filed under section 397 of CRPC before the learned Sessions Court, within time. It therefore shows that the Applicant was under the bonafide belief that a revision lies. Once such matter is filed and diligently prosecuted, it is presumed that the Applicant was under such bonafide belief about the maintainability of such proceedings. It cannot be argued that when no revision lies, filing of such

revision would not be considered as bonafide attempt. There could be incorrect advise given to the Applicant who is an Officer of the Department and who is totally dependent on the advice of the legal team of the Department. The question here is not of wrong advise but whether the Applicant was under bonafide belief. Since the revision was filed challenging the impugned order and accordingly the Court has issued notice to the respondents, it clearly presumed that the Applicant was under the bonafide belief that revision lies.

34. As observed in the case of **Collector Land Acquisition, Anantnag**(supra) ordinarily a litigant does not stand to benefit by lodging a case before the wrong forum and by choosing wrong provision. Similarly, once an objection was raised about the maintainability of revision, the Special Public Prosecutor appearing for the Applicant before the Sessions Court, immediately inform the Department. Para 3 of the application would go to show that on receipt of such information from the Special Public Prosecutor, the Department requested him to provide copies of relevant records. Part of the records was furnished to the Department on 04/01/2019 and the remaining record from the Court of JMFC was made available on

15/03/2019. The Standing Counsel of the Department was then provided with the records who drafted the appeal and the application within 2 weeks and forwarded it to the Department on 30/03/2019 and on the next day by obtaining approval, the present application along with appeal was filed.

35. Above explanation in paragraph Nos.2, 3 and 4 of the application would clearly reveal that first of all there was a bonafide belief that revision lies and when such a fact was objected, the Department was asked to verify it. On receiving the document, a draft for the appeal and application were prepared within a short time and then the same were presented to this Court.

36. The contention of Mr Nankani is that the averments in the application are vague and Applicant failed to explain as to who gave wrong advise. He also contended that the documents regarding the notes of the official of the Department are not produced to show the dates. He also submitted that there is no explanation as to why records were called again when the revision was filed on the basis of the same records.

37. It is necessary to note that the Applicant is a Department of Government of India and operates through its various officials. It contains a Legal Department which is required to be consulted on legal issues. The Special Public Prosecutor intimated the Department about the objections raised and thereafter the consultation took place on the receipt of the records available with the Special Public Prosecutor and also the record available with the JMFC who dismissed the complaint. Thus to my mind, the Applicant has satisfactorily disclosed the reasons for the purpose of consulting the Legal Department and thereafter forwarding the file to the Standing Counsel for preparing an appeal. It is necessary to note here that even during the above process, the revision file before the Sessions Court was pending. The Sessions Court did not pass any order on the revision with regard to its maintainability. Thus, the records show that though the revision was pending, the Applicant processed the file on the objection of the maintainability of the revision raised by the Respondents and then decided to file an appeal.

38. Since the Applicant is a Department and the decision has to be taken in consultation with the various officers including

the Legal Department, it is expected that some time is required to be consumed. However the application clearly goes to show that all the papers were furnished to the Department by 15/03/2019 and thereafter such papers were forwarded to the Standing Counsel who prepared the draft and forward it by e-mail to the Department on 30/03/2019 that is within 2 weeks. The appeal along with the present application was immediately filed on the next day.

39. With these factual matrix, the decisions referred on behalf of the respondents will have to be considered. The first set of decisions referred by Mr Nankani are in respect of powers of the Court under Section 5 of the Limitation Act. There is no need to refer to all the 15 decisions provided in the first set however the settled principle of law could be considered as under:

> (A) The Court would exercise its discretion in condoning or declining to condone delay judiciously and ensure that no serious prejudice is caused to either of the parties to the proceedings.
>
> (B) When an appeal becomes barred by time because of negligence or default of one of the parties, valuable rights accrue to the others which normally are not being

taken away in a routine manner and too liberalised exercise of discretionary power.

(C) It is equally true that the period of limitation and object of prescribing periods is not intended to destroy rights but is founded on public policy fixing a life span for legal remedy for general welfare.

(D) Length of delay per se may not be a ground for rejecting an application but if a satisfactory explanation has been furnished by the parties which can be accepted by the Court in consonance with the settled norms for exercise of such discretion.

(E) The rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the plaintiff does not take dilatory tactics but seeks remedy promptly.

(F) The laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personal property and other laws.

(G) The Courts have to adopt a justice oriented approach dictated by the uppermost consideration that ordinary a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by

gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the Court.

(H) The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

(I) Sufficient cause cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to a party.

(J) The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. The word sufficient embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the case, duly examined from the viewpoint of reasonable standard of a cautious man. In other words "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive".

(J) The expression "sufficient cause" contained in section 5 of the Limitation Act is elastic enough to yield

different results depending upon the object and context of a statute.

(K) It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

(L) The Courts have to adopt a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the Courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice.

40. Applying the above settled prepositions of law as laid down in various decisions as found in set- I as relied upon by Mr Nankani, to matter in hand it would clearly support the contention raised by the Applicant. Firstly, the explanation given in the application would clearly go to show that the revision was filed with a bonafide belief that the same is maintainable. Secondly, when the objections were raised, the Special Public Prosecutor intimated the Department and thereafter the documents were collected and the draft of the appeal along with delay application were prepared. Thus there is sufficient cause

disclosed by the Applicant in approaching this Court beyond the period of limitation.

41. It is a fact that the Department would not be benefited by filing the proceedings before the wrong Forum deliberately. It is admitted fact that the complaint filed by the complainant was rejected only on the ground that the Applicant along with Counsel unable to remain present. The complaint was not decided on merits. Thirdly, action was taken when the Respondent raised objections to the tenability of the revision and by corrective measure, an appeal was filed before this Court even when the revision was pending before the Sessions Court. Such revision was later on withdrawn, which again show bonafides on the part of the Applicant to prosecute the matter before the correct Forum.

42. The contention of the Respondents that from January till March, there is no explanation as to why the documents were not furnished or collected, will have to be answered on the ground that every day's delay cannot be explained. The Department functions on the basis of its officials and some time is expected to be consumed regarding communication as well as

handing over all documents. First set of documents were furnished by the Special Public Prosecutor which were available with him. The second set was required about the documents which were presented before the learned Magistrate along with the complaint. Thus a contention of every day's delay, every hour delay, is not required to be explained, however, the sufficient cause must be satisfactorily explained. The Court has to take a pragmatic view in order to do substantial justice. Technicalities and other considerations can not pitted against substantial justice.

43. Second set of decisions referred to by Mr Nankani are basically with regard to powers under Section 14 of the Limited Act. It is not the case of the Applicant that the entire delay was occasioned because the Applicant was bonafidely litigating before the wrong Forum. Admittedly, revision was filed within time and when it is pointed out to the Applicant that the revision is not tenable, suitable action was taken and appeal was filed with the application for condonation of delay.

44. Section 14 of the Limitation Act reads thus:

14. ***Exclusion of time of proceeding bona fide in court without jurisdiction.****—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order, where such permission is granted on the ground that the first suit

must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

45. A perusal of this provision would go to show that the party is entitled to seek exclusion of time of the proceeding bonafidely filed in a Court having no jurisdiction.

46. It is not the case of the Applicant that they were aware that the revision is not maintainable and that the appeal is required to be filed. The impugned order passed by the Magistrate would clearly go to show that the complaint was dismissed for non-appearance of the complainant and the Standing Counsel for the Department. Such a decision was not on merit but on the default

of appearance. Thus, the contention of Applicant that they were under bonafide belief and accordingly advised to file revision cannot be doubted with.

47. The appeal was filed along with the delay application even when the revision was pending and only after filing of the appeal the said revision was withdrawn. The revision was filed within time. Thus, the contention of the Applicant that he is entitled for the exclusion of such time litigating before the wrong Forum needs to be considered.

48. In the case of **Deena versus Bharat Singh** [(2002) 6 SCC 336], the Apex Court observed that in order to claim benefit under Section 14 of the Limitation Act, the ingredients which are required to be made are as under:

> *(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
>
> *(2) the prior proceeding had been prosecuted with due diligence and good faith;*
>
> *(3) the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*

(4) the earlier proceeding and the later proceeding must relate to the same matter in issue, and

(5) both the proceedings are in a court.

49. The above ingredients as observed by the Apex Court are squarely applicable to the matter in hand. Therefore, the contention of the Applicant even on this count will have to be considered that the Applicant was bonafidely litigating before the wrong Forum.

50. Though the present matter deals with a criminal complaint and more specifically the order of the Magistrate shows that the Accused/Respondent is acquitted, the fact remains that such acquittal is without any full-fledged trial and only on the absence of the complainant. In such circumstances, the Court must adopt a pragmatic approach specifically when the case is of unwarranted acquittal which could result in failure of justice and can also consider the concept of sufficient cause liberally. Accordingly, the third set of decisions relied upon by the Respondent will also go to show that the same principles will have to be applied to the criminal appeal filed beyond limitation

challenging the acquittal and that too on a technical ground wherein a Court is required to take a lenient view.

51. In the present matter, the record shows that the Applicant has diligently prosecuted the matter by filing revision and that too within a period of limitation. Once an objection was taken, the matter was re-examined and accordingly a decision was taken to file an appeal even during the pendency of the revision proceedings. The learned Sessions Court was not called upon by the Respondents to decide on its own jurisdiction or the maintainability of revision. The documents and opinions were furnished and accordingly the appeal was drafted within 2 weeks from the date of receipt of all the records. Immediately on the next date of receipt of the draft of an appeal, it was filed before this Court. This clearly shows the bonafide attempt and the due diligence adopted by the Applicant in prosecuting the matter. Thus, the reasons disclosed in the application and that too on affidavit must be construed as sufficient cause to condone the delay.

52. For the above reasons, the application stands allowed. The delay in filing an application for leave to appeal along with a memo of appeal stands condoned.

BHARAT P. DESHPANDE, J.