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Neutral Citation No. - 2024:AHC:17818

AFR

Reserved on : 12.01.2024

Delivered on : 01.02.2024

Court No. - 74
Case :- CRIMINAL REVISION DEFECTIVE No. - 576 of 2023

Revisionist :- Diwakar Nath Tripathi
Opposite Party :- State of U.P. and another
Counsel for Revisionist :- Ramesh Chandra Dwivedi
Counsel for Opposite Party :- M.C. Chaturvedi, Senior Advocate / AAG, A.K. Sand, GA, Ajay Singh, AGA-I, Neeraj Kant Verma AGA, Rajeev Lochan Shukla

Hon'ble Samit Gopal, J.

Order on Crl. Misc. Delay Condonation Application No. 1 of 2023

1. List revised.

2. The present revision U/s 397/401 Cr.P.C. has been filed before this Court by the revisionist Diwakar Nath Tripathi with the following prayers:-

> *"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to summon the lower Courts record, allow the present Revision and be pleased to set aside the Judgment and Order dated 04.09.2021, passed by the Learned Additional Chief Judicial Magistrate, Court No. 17, Allahabad, C.N.R. No. 2750/2021, Misc Case No. - 102 / X II / 2021, Diwakar Nath Tripathi Vs. Keshav Prasad Maurya, P.S. Cantt, District- Prayagraj by which the application filed by the revisionist U/S 156(3) Cr.P.C. was rejected otherwise the Revisionist shall suffer irreparable loss and injury."*

3. The revision was presented before the Section Officer, Stamp Reporter (Criminal) High Court, Allahabad on 12.04.2023 and was reported to be in limitation upto 29.05.2022 and thus beyond time by 318 days. A delay condonation application dated 11.04.2023 supported by an affidavit dated 10.04.2023 of the revisionist has been filed with it. Subsequently the revision after being presented for reporting was then presented before J.R. (J) (Computer), High Court Allahabad on 21.04.2023 for its filing after which it was marked to be beyond time by 327 days.

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4. Previously the applicant had filed a Crl. Misc. Application U/s 482 No. 27198 of 2021 (Diwakar Nath Tripathi Vs. State of U.P. and another) which after some arguments was prayed to be dismissed as withdrawn by learned counsel appearing therein as he intended to explore the remedy available to him under law and as such the same was dismissed as withdrawn by this Court. The said order dated 24.11.2022 reads as under:-

> *"List revised.*
>
> *Heard Sri Kamal Krishna Roy, learned counsel for the applicant, Sri M.C. Chaturvedi, learned Senior Advocate/Additional Advocate General assisted by Sri A.K. Sand, learned AGA for the State.*
>
> *The present applicant under Section 482 Cr.P.C has been filed by the applicant with the following prayer:-*
>
> *"It is, therefore, most respectfully prayed that this Hon'ble Court may most graciously be pleased to allow this application to quash/set aside the impugned order dated 04.09.2021 passed by Addl. Chief Judicial Magistrate, Allahabad in CNR No.2750 of 2021 Misc. Case No.102/XII/2021 Diwakar Nath Tripathi Police Station Cantt. District Prayagraj and also stay the operation of order dated 04.09.2021 and further direct to the learned Magistrate to exercise their power under Section 156(3) Cr.P.C. and direct to lodge the first information report, during the pendency of present application Under Section 482 Cr.P. before this Hon'ble Court, otherwise the applicants shall suffer grave irreparable loss and injury."*
>
> *The applicant is the complainant of the case.*
>
> *After some arguments, learned counsel for the applicant prays that the present application under Section 482 Cr.P.C. be dismissed as withdrawn as he intends to explore the remedy available to him under law.*
>
> *The prayer is allowed.*
>
> *The present application under Section 482 Cr.P.C. is dismissed as withdrawn."*

The order is annexed as annexure 1 to the affidavit in support of the criminal revision.

5. Vide order dated 21.11.2023 passed by a co-ordinate Bench of this Court, notice was issued to the respondent no.2 on the delay condonation application. The said order reads as under:-

> *"Heard learned counsel for the revisionist and Sri P.K. Giri, learned Additional Advocate General along with learned A.G.A. for the State.*
>
> *This criminal revision has been filed with delay of 327 days.*

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Issue notice to the respondent no.2 returnable at an early date for hearing on delay condonation application filed under Section 5 Limitation Act.

The opposite parties may file counter affidavit within four weeks.

Put up on 21.12.2023 as fresh."

6. Heard Sri Ramesh Chandra Dwivedi, learned counsel for the revisionist, Sri M.C. Chaturvedi, Senior Advocate / learned Additional Advocate General, Sri A.K. Sand, learned Government Advocate, Sri Ajay Singh, learned Additional Government Advocate-I and Sri Neeraj Kant Verma, learned Additional Government Advocate for the State of U.P. and Sri Rajeev Lochan Shukla, learned counsel for the opposite party no.2/ Keshav Prasad Maurya and perused the records.

7. Learned counsel for the revisionist argued that the delay in filing of the present revision is not wilful. It is argued that due to the illness of the revisionist he could not file the revision in time and as such the same was reported to be delayed. It is argued that the reasons for delayed filing of the revision have been pleaded in paras 3 to 7 of the affidavit in support of the application for condonation of delay. It is argued that the reasons as pleaded in the said paragraphs go to show that their has been no deliberate delay in filing of the present revision and as such the delay condonation may be allowed and the revision be treated to have been filed in time.

8. Per contra, learned counsels appearing for the Respondent No. 1/ State of U.P and learned counsel for the Respondent No. 2/ Keshav Prasad Maurya vehemently opposed the delay condonation application and submitted that the filing of the revision is with malafides. It is argued that the delay in filing of it is without any justifiable reason. It is argued that the reasons as pleaded in the affidavit in support of the delay condonation application are totally vague, without any justifiable reason and go to show the casualness of the revisionist in filing of the present revision. It is argued that the present revision is barred by limitation and there is also no cause in it serving a fruitful purpose which could be considered for

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condoning the unexplained delay and latches. It is argued that the delay condonation application be dismissed.

9. A delay condonation application under Section 5 of the Limitation Act, 1963 dated 11.04.2023 has been filed by the revisionist with the following prayers:

> *"It is, therefore, Most Respectfully prayed that this Hon'ble Court may kindly be pleased to condone the delay, if any, occurred in filing the present Criminal Revision and further kindly hear the matter on merit, otherwise the Revisionist shall suffer irreparable loss and injury.*
>
> *And/or to pass such other and further order which this Hon'ble Court may deem fit and proper in the circumstances of the case."*

10. In the affidavit dated 10.04.2023 in support of the delay condonation application, paras 3 to 7 have been averred as the reasons for the delay in filing of the present revision. The said paragraphs read as under:-

> *"3. That in Criminal Misc. Application No. 27198 of 2021, the Hon'ble Court passed an Order on 24.11.2022 mentioning therein that the present Application be dismissed as withdrawn as the Applicant intends to explore the remedy available to him.*
>
> *4. That thereafter the Applicant decided to challenge the Impugned Order dated 04.09.2021 by filing Criminal Revision and applied for the certified copy of the Order which could be available 02.02.2023.*
>
> *5. That thereafter the Applicant fell ill suffering from dengue which lasted for two months from the first week of February to the first week of April in which he was taking treatment and advised bed rest.*
>
> *6. That a valuable time has passed in recovery of the Petitioner/Applicant from the prolonged illness.*
>
> *7. That the reason for filing the Criminal Revision in delay is genuine and bona-fide and not intentional."*

11. The order impugned in the present revision is an order dated 04.09.2021 passed by the Additional Chief Judicial Magistrate, Court No. 17, Allahabad in Criminal Case No. 102/XII/2021 (Diwakar Nath Tripathi Vs. Keshav Prasad Maurya), Police Station Cantt, District Prayagraj by which an application moved under Section 156(3) Cr.P.C. of the revisionist has been rejected.

12. The perusal of the grounds as averred in the affidavit in support of the delay condonation application goes to show that the revisionist states

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that his application under Section 482 Cr.P.C. was dismissed as withdrawn vide order dated 24.11.2022 since he intended to explore the remedy available to him after which he decided to challenge the impugned order dated 04.09.2021 by filing a criminal revision and applied for the certified copy of the same which could be available to him on 02.02.2023. Thereafter he fell ill suffering from dengue since last two months from 1st week of February to 1st week of April and was taking treatment and advised bed rest. His valuable time passed in the recovery from the prolonged illness, the reason for filing the criminal revision with delay is genuine and bonafide and not intentional.

13. The perusal of the said paragraphs go to show that except for the bald statement of the deponent of the affidavit in support of the delay condonation application who is the revisionist himself, there is no material concrete in any nature to substantiate his averments. Moreso para 4 of the affidavit although mentions the date on which the order impugned could be made available to him which is mentioned therein as 02.02.2023 but there is no disclosure whatsoever as to on which date the certified copy of it was applied for, the date when it was ready for being issued and the date on which it was notified to be ready for being issued. The said events and facts have conveniently been avoided. The order impugned is from page 15 to 19 of the paper book which is along with the memo of the revision. A perusal of the same would go to show that the certified copy of the same was applied for by an Advocate on 02.02.2023, the same was ready on the same day i.e. 02.02.2023 and even the same was issued on the same day i.e. 02.02.2023. In between the other formalities for it were also done on the same day. The calculation of the period of limitation was thus counted by the Stamp Reporter of this Court who give his report that the revision is beyond time by 318 days upto 12.04.2023 which was the date of the said report. Even otherwise the 482 Cr.P.C. petition filed by the revisionist was got dismissed as withdrawn on 24.11.2022 after which the certified copy

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and the order impugned was applied for as late as on 02.02.2023. The law with regards to the consideration of an application for condonation of delay is trite.

14. Section 5 of the Limitation Act, 1963 empowers a Court to condone delay in filing a motion before it. It reads as under:

> ***"5. Extension of prescribed period in certain cases.-*** *Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*
>
> *Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."*

15. In the case of **N. Balakrishnan v. M. Krishnamurthy : (1998) 7 SCC 123** the Apex Court has held that exercise of discretion in condoning delay should be on satisfactory grounds, acceptable explanation and a party should not resort to dilatory tactics but seek their remedy promptly. It is held as follows:

> ***"9.*** *It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*
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> ***10.*** *The reason for such a different stance is thus:*
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>> *The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.*

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> ***11.*** *Rules of limitation are not meant to destroy the rights of parties. They are meant to see that 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 lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest republican up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*
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> ***12.*** *A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jainv. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749].*
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> ***13.*** *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is 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. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.***"**

16. In the case of **Lanka Venkateswarlu v. State of A.P. : (2011) 4 SCC 363** the Apex Court reiterated the view as take in the case of N. Balakrishnan (supra) and further held that once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence,

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default or inaction of that party and further that Justice must be done to both parties equally. It was held as follows:

> ***"20.*** *In N. Balakrishnan [(1998) 7 SCC 123] this Court again reiterated the principle that: (SCC p. 127, para 11)*
>
> > *"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that [the] parties do not resort to dilatory tactics, but seek their remedy promptly."*
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> ******************************
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> ***23.*** *The concepts of liberal approach and reasonableness in exercise of the discretion by the courts in condoning delay, have been again stated by this Court in Balwant Singh [(2010) 8 SCC 685 : (2010) 3 SCC (Civ) 537] , as follows: (SCC p. 696, paras 25-26)*
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> > *"25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.*
> >
> > *26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."*
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> ******************************
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> ***28.*** *We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather*

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pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. *The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.***"**

17. In **Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai : (2012) 5 SCC 157** the Apex Court held that if the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. It was held as follows:

"19. *In P.K. Ramachandran v. State of Kerala [(1997) 7 SCC 556], this Court while reversing the order passed by the High Court which had condoned 565 days' delay in filing an appeal by the State against the decree of the Sub-Court in an arbitration application, observed that: (SCC p. 558, para 6)*

> *"6. 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."*

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23. *What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*

24. *What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.***"**

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18. In **Basawaraj v. Land Acquisition Officer : (2013) 14 SCC 81** the Apex Court held that "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". It was further held that 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 bonafide or was merely a device to cover an ulterior purpose. It was held as under:

> ***"9.*** *Sufficient cause is the cause for which the 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. Therefore, 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 viewpoint 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 a 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. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336], Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953], Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629].)*
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> ***10.*** *In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".*
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> ***11.*** *The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long*

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as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201].)

***12.** It is a settled legal proposition 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. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

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***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 bona fide 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."*

19. Further in **Majji Sannemma v. Reddy Sridevi : (2021) 18 SCC 384** the Apex Court while referring to its various judgments has held that that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It has been held as follows:

*"**6.2.** We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15-3-2017 till the second appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 1-1-2017 to 15-3-2017 and she was advised to take bed rest for the said period.*

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However, there is no explanation for the period after 15-3-2017. Thus, the period of delay from 15-3-2017 till the second appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously.

***7.** At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:*

***7.1.** In Ramlal [Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : (1962) 2 SCR 762 : AIR 1962 SC 361] , it is observed and held as under : (AIR pp. 363-64, para 7)*

> *"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan [Krishna v. Chathappan, 1889 SCC OnLine Mad 1] : (SCC OnLine Mad para 2)*
>
> > *'2. … Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.' "*

***7.2.** In P.K. Ramachandran [P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556], while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the 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. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.*

***7.3.** In Pundlik Jalam Patil [Pundlik Jalam Patil v. Jalgaon Medium Project, (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907], it is observed as under : (SCC p. 450)*

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> *"… the laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."*

7.4. *In Basawaraj [Basawaraj v. LAO, (2013) 14 SCC 81], it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.*

7.5. *In Pundlik Jalam Patil [Pundlik Jalam Patil v. Jalgaon Medium Project, (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907], it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The courts help those who are vigilant and "do not slumber over their rights".*

8. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by Respondents 1 and 2 herein—appellants before the High Court for condonation of huge delay of 1011 days in preferring the second appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by Respondents 1 and 2 herein—original defendants. Impugned order [Reddy Sridevi v. Majji Sannemma, 2021 SCC OnLine AP 3977] passed by the High Court is unsustainable both, on law as well as on facts.*"

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20. Then in the case of **Sheo Raj Singh v. Union of India : (2023) 10 SCC 531** the Apex Court has held that there is a distinction between "explanation" and "excuse" and held that care must be taken to distinguish them and each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. It was held as under:

> *"**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."*

21. Even otherwise by deciding the application for delay condonation and not entering into the merits of the matter would not in any manner prejudice the revisionist. The law on the grievance of the revisionist is also well settled. In the case of **Aleque Padamsee Vs. Union of India : 2007 (6) SCC 171** it has been held by the Apex Court that the correct position in law is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out but in case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code of Criminal Procedure. It has been held as follows:

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> *"**7.** Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences case [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] and reiterated in Gangadhar case [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences case [(1996) 11 SCC 582 : 1997 SCC (Cri) 303], Gangadhar case [(2004) 7 SCC 768 : 2005 SCC (Cri) 404], Hari Singh case [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63], Minu Kumari case [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and Ramesh Kumari case [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322], we find that the view expressed in Ramesh Kumari case [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari case [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences case [(1996) 11 SCC 582 : 1997 SCC (Cri) 303], Gangadhar case [(2004) 7 SCC 768 : 2005 SCC (Cri) 404], Minu Kumari case [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and Hari Singh case [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63]. The view expressed in Ramesh Kumari case [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] was reiterated in Lallan Chaudhary v. State of Bihar [(2006) 12 SCC 229 : (2007) 1 SCC (Cri) 684 : AIR 2006 SC 3376]. The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences case [(1996) 11 SCC 582 : 1997 SCC (Cri) 303], Gangadhar case [(2004) 7 SCC 768 : 2005 SCC (Cri) 404], Hari Singh case [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] and Minu Kumari case [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310]. <u>The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code.</u> It appears that in the present case initially the case was tagged by order dated 24-2-2003 with WP (C) No. 530 of 2002 and WP (C) No. 221 of 2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions."*

(emphasis supplied)

22. The revisionist claims himself to be in the field of social service as pleaded by him in his application filed under Section 156(3) Cr.P.C. which is annexure 3 to the affidavit in support of the revision. In para 1 he claims himself to be a social worker and an R.T.I. Activist and as such he cannot be found as a person to be casual, non-serious and non-vigilant. He also

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cannot be taken to be a rustic and an ignorant villager. There is no ground taken in the application for condonation of delay and the affidavit in support of it to show that there has been seriousness by the revisionist in perusing the matter. The averments in the affidavit in support of the application for condonation of delay are vague and unsubstantiated submissions. The revisionist has failed even remotely to demonstrate sufficient cause for condonation of delay. Although the length of the delay has never been a consideration before the Courts for deciding an application for condonation of delay provided there has been proper, efficient and substantiated grounds mentioned therein which could have stood uncontroverted. Although the grounds to allow the application for delay condonation to advance substantial justice could have been considered but looking to the history of the issue and dispute being the filing of an application under Section 482 Cr.P.C. before this Court challenging the order impugned, getting it withdrawn for seeking appropriate remedy as per law, then the filing of the present revision that too with a delay and conveniently avoiding the disclosure of the date on which the order impugned was applied for, for being filed with the memo in the revision before this Court along with the fact that there has been unsubstantiated submissions as reasons for delay in filing of the revision it does not show any seriousness in persuasion of the matter.

23. This Court views the applicant to be casual, non-serious and non-vigilant in preferring the present revision.

24. Thus looking to the entire facts as stated above and the law as culled out along with fact of non-prejudice, this Court is of the opinion that the application for condonation of delay is without any cogent reason, convincing justification and substantiated material and as such is not inclined to condone the delay.

25. The Criminal Misc. Delay Condonation Application No. 1 of 2023 dated 11.04.2023 is **dismissed**.

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26. Since the misc. application for condonation of delay is dismissed, the revision also would not survive and is also consigned to records.

Order Date :- 01.02.2024
M. ARIF

(Samit Gopal, J.)