A STATE (NCT OF DELHI)

v.

AHMED JAAN

(Criminal Appeal No. 1262 of 2008)

AUGUST 12, 2008

B

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ]

Limitation Act, 1963:

C *s. 5 – Condonation of delay – "sufficient cause" – HELD: It is sufficiency of the cause which counts, and not length of delay – Expression "sufficient cause" should receive a liberal construction – As regards delay on the part of State, certain amount of latitude is not impermissible – Expression "sufficient cause" should be considered with pragmatism in justice oriented approach rather than technical detection of sufficient cause for explaining every day's delay – Matter remitted to High Court to decide the criminal revision on merits – Suggestions made to prevent delay in State litigation – Administration of justice – Code of Criminal Procedure, 1973 – s. 401.*

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A charge-sheet was filed against the respondent-accused for commission of offences punishable u/ss 121, 121-A, 122, 124-A and 120-B, IPC. The trial court, by its order dated 30.10.1998, discharged the accused holding that *prima facie* there was no evidence against the accused. The revision petition filed in 2003 by the State along with an application for condonation of delay was dismissed by the High Court as time barred.

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In the instant appeal filed by the State, it was contended for the appellant that the order of the trial court directing discharge of the accused was unsustainable both on facts and in law; and the High Court did not even consider the explanation furnished for the delay.

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Allowing the appeal, the Court

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HELD: 1.1 The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause; and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard and fast rules. The expression "sufficient cause" should receive a liberal construction. [para 7-8] [33,G; 34,C,D]

N. Balakrishnan v. M. Krishnamurthy **AIR 1998 SC 3222;** *New India Insurance Co. Ltd. v. Shanti Misra* **1975 (2) SCC 840;** *Shakuntala Devi Jain v. Kuntal Kumari* **AIR 1969 SC 575;** *Concord of India Insurance Co. Ltd. v. Nirmala Devi* **1979 (4) SCC 365;** *Lala Mata Din v. A. Narayanan* **1969 (2) SCC 770;** *State of Kerala v. E. K. Kuriyipe* **1981 Supp SCC 72;** *Milavi Devi v. Dina Nath* **(1982 (3) SCC 366;** *O. P. Kathpalia v. Lakhmir Singh* **1984 (4) SCC 66;** *Collector Land Acquisition* v. *Katiji* **1987 (2) SCC 107;** *Prabha v. Ram Parkash Kalra* **1987 Supp SCC 339; and** *G. Ramegowda, Major v. Spl. Land Acquisition Officer* **1988 (2) SCC 142 – relied on.**

Brij Indar Singh v. Kanshi Ram **ILR (1918) 45 Cal 94 (PC) – referred to.**

1.2 No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. 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. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace encumbered with procedural red-tape in decision making process. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost

A 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 explain-
B ing every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case
C is hopelessly without merit. [para 14] [38,E, G-H; B-D]

State of Haryana v. Chandra Mani and Ors. **1996 (3) SCC 132;** *Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma* **1996 (10) SCC 634; and** *State of Nagaland v. Lipok AO and Ors.* **2005 (3) SCC 752 – relied on.**

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1.3 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 permis-
E **sion for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer concerned and he should be made personally responsible for lapses, if any. [para 14] [38,E-F]**

F **1.4 In the instant case, the appellant had indicated the reasons for the delay in filing and re-filing the revision petition. The High Court unfortunately did not deal with those explanations and merely stated that the delay has not been explained. The High Court was required to examine the**
G **correctness of the explanation given, keeping in view the principles laid down by this Court in several cases. The explanations offered were plausible and deserved to be accepted. Accordingly, the impugned order of the High Court is set aside and the matter is remitted to it to hear the criminal revision on merits. [para 16] [39,C-D]**
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Case Law Reference:

AIR 1998 SC 3222	**relied on**	**para 7**
1975 (2) SCC 840	**relied on**	**para 8**
ILR (1918) 45 Cal 94 (PC)	**referred to**	**para 8**
AIR 1969 SC 575	**relied on**	**para 8**
1979 (4) SCC 365	**relied on**	**para 9**
1969 (2) SCC 770	**relied on**	**para 9**
1981 Supp SCC 72	**relied on**	**para 10**
1982 (3) SCC 366	**relied on**	**para 10**
1984 (4) SCC 66	**relied on**	**para 11**
1987 (2) SCC 107	**relied on**	**para 11**
1987 Supp SCC 339	**relied on**	**para 12**
1988 (2) SCC 142	**relied on**	**para 13**
1996 (3) SCC 132	**relied on**	**para 15**
1996 (10) SCC 634	**relied on**	**para 15**
2005 (3) SCC 752	**relied on**	**para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1262 of 2008

From the final Judgment and Order dated 10.8.2005 of the High Court of Delhi at New Delhi in Criminal Revision Petition No. 356/2004

B.B. Singh, A. Tarique, D.S. Mahra and Anil Katiyar for the Appellant.

Mohd. Nasir, Mohd, Salim, Rishi Maheshwari and Shally Bhasin Maheshwari for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J 1. Leave granted.

2. Challenge in this appeal is to the order passed by a

A learned Single Judge of the Delhi High Court dismissing the Criminal Revision Petition (Crl.R.P.No.356/2004) on the ground that there was inordinate delay in filing and re-filing the revision petition.

B 3. Factual position as highlighted by the appellant is as follows:

The respondent, who is a resident of Jammu &, Kashmir, was apprehended at Sheila Cinema in Delhi on 05.03.1997 on the basis of information that he belongs to a terrorist outfit C "Tehreek-ul-Mujahideen' (TUM) of J&K. From a search of his person and his hotel room, a letter containing instructions regarding activities to be carried out in Delhi for collecting money and arms for freedom of Kashmir was recovered. The letter contained coded information regarding RDX and Grenades as "AT'TA' and 'ANAR' and was allegedly written by one Abu Ibrahim. D A personal diary containing telephone numbers of Pakistan and a sum of Rs.30,000/- suspected to be Hawala money were also recovered from the respondent. It was found that the respondent had been frequently coming to Delhi and stayed at Welcome Guest House and used to make telephone calls to his contacts in E Pakistan and collected money in Delhi which he used to transfer to Srinagar through carpet dealers at Kashmir and Commission agents for goats and thus, he actually got transferred Rs.17-1/4 lacs through Ghayasuddin and Mohd. Ahad of Srinagar.

F The respondent was charge sheeted under Sections 121/ 121A/122/124-A/120-B of Indian Penal Code, 1860 (in short 'IPC') on the above allegations of being a member of TUM and for conspiring in waging war against the Government of India. The respondent was thereafter tried in the Court of the Addl. G Sessions Judge, Delhi in Sessions Case No.7/98.

By order dated 30.10.1998 in Sessions Case No.7/98, the learned Addl. Sessions Judge discharged the accused at the threshold, holding that prima facie there was no legal evidence to show that the respondent has committed any of the H alleged acts.

Aggrieved, the appellant filed Criminal Revision Petition 356/2004, along with an application for condoning the delay in filing the petition. After filing the revision petition, the Registry of the High Court raised certain objections, and the file was received back in the Department for curing the defects. Unfortunately, due to paucity of space, the file got mixed up with other files in the office of the Standing Counsel, and was traced only in June, 2003. The revision petition was thereafter re-filed along with an application for condonation of delay in re-filing.

The High Court dismissed Crl. Rev. Petition No.356/2004 and Crl. M.A. No. 5227/2004 by judgment dated 10.8.2005, being of the view that there was unexplained delay in filing and re-filing the revision petition.

4. It is submitted by learned counsel for the appellant that the High Court did not even deal with the explanations given by the appellant in explaining the delay. The summary rejection by the High Court holding that delay has not been properly explained was not correct. It is pointed out that the conclusions of learned trial Judge directing discharge are unsustainable both on facts and in law.

5. Learned counsel for the respondent on the other hand submitted that merely because the allegations were serious in nature, the order impugned before the High Court does not require interference as it is blemishless. Learned trial Judge rightly noted that there was no evidence of criminal conspiracy against him and therefore his discharge was rightly directed.

6. At this juncture, it is stated, at this length of time it would not be proper to set aside the order of High Court.

7. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In *N. Balakrishnan v. M. Krishnamurthy* (AIR 1998 SC 3222) it was held by this Court that

A Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar
B circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

C 8. What constitutes sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. v. Shanti Misra* (1975 (2) SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expres-
D sion "sufficient cause" should receive a liberal construction. In *Brij Indar Singh v. Kanshi Ram* (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala*
E *Devi Jain v. Kuntal Kumari* (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

F 9. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* (1979 (4) SCC 365) which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In *Lala Mata Din v. A. Narayanan* (1969 (2) SCC 770), this Court had held that there
G is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was
H not tainted by any mala fide motive.

10. In *State of Kerala v. E. K. Kuriyipe* (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In *Milavi Devi v. Dina Nath* (1982 (3) SCC 366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

11. In *O. P. Kathpalia v. Lakhmir Singh* (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector Land Acquisition* v. Katiji (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or

A on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach
B from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are
C accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned.

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

H 13. In *G. Ramegowda, Major v. Spl. Land Acquisition Of-*

ficer (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Govern-

A mental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

14. 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-a-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.

B C D E F G H

15. The above position was highlighted in *State of Haryana v. Chandra Mani and Ors.* (1996 (3) SCC 132); *Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma* (1996 (10) SCC 634) and *State of Nagaland v. Lipok AO and Ors.* (2005 (3) SCC 752). It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

16. We find that the appellant had indicated the reasons for the delay in filing and re-filing the revision petition. The High Court unfortunately did not deal with those explanations and merely stated that the delay has not been explained. The High Court was required to examine the correctness of the explanation given, keeping in view the principles laid down by this Court in several cases. According to us, the explanations offered were plausible and deserved to be accepted. Accordingly, we set aside the impugned order of the High Court and remit the matter to it to hear the Criminal Revision on merits. It is made clear that we have not expressed any opinion on merits.

17. The appeal is allowed.

R.P. Appeal allowed.