

(2000) 07 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 251 of 2000

State of Himachal Pradesh

APPELLANT

Vs

Dr. C.L. Malhotra and Others

RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 — Section 22
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2001) 2 ShimLC 17

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : K.D. Batish, A.A.G, for the Appellant; B.K. Malhotra, N.K. Sood, Anand Sharma and Tarlok Chauhan, for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—This is an application by the State of Himachal Pradesh u/s 5 of the Limitation Act for condonation of delay in filing an appeal against the judgment dated 2.8.1999 passed by the learned Special Judge, Shimla in case No. 19-S/7 of 1997/ 96 under Sections 420, 120B of the Indian Penal Code read with Section 13(2) of the Prevention of Corruption Act and Section 22 of the H.P. Prevention of Corrupt Practices Act.

2. I have heard the learned Additional Advocate General for the State and the learned Counsel for the Respondents-accused and have perused the material placed on record.

3. It is not disputed that the judgment sought to be impugned was pronounced on August 2, 1999. The copy of the judgment was applied for on 3.8.1999, and delivered to the State of H.P. on 11.8.1999. The appeal has been filed on 10.12.1999 and this application for condonation of delay has been moved on March 7, 2000. It is also not disputed that there is delay of 32 days in filing the

appeal. The dispute, however, is that according to the learned Additional Advocate General, there is sufficient cause for condonation of delay as the matter remained under examination by different branches and officers of the State Government whereas according to the Respondents, no sufficient cause has been shown to condone the delay.

4. Before I proceed to discuss the merits of the application, it will be proper and expedient to refer to the law regarding condonation of delay as interpreted and applied by the Apex Court.

5. In *State of Haryana Vs. Chandra Mani and others*, the Honable Supreme Court held as under:

When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be congenial 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.

6. In *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, the Honable Supreme Court held as follows :

It is now well settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even inspite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave

miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic.

7. What emerges from the above, is that (i) in cases wherein the State is the applicant praying for condonation of delay, the Court should not insist on explanation of every day's delay while determining the sufficient cause for delay; (ii) the delay caused by the Government officials in filing the appeal due to slow movement of file, indifferent attitude, negligence or keeping them on their tables intentionally or otherwise are the material factors to be given due consideration and where the larger public interest is involved and the delay *prima facie* appears to be intentional or result of gross negligence, the approach of the Court should be pragmatic, so that the public interest may not suffer.

8. In this case, it is admitted case of the State that copy of judgment was available to it on 11.8.1999. However, vide para 4 of the application duly supported by affidavit of an official of the State Government holding the rank of Additional Secretary (Home) the file remained with the Vigilance Department upto 17.11.1999 i.e. a period of more than 3 months. It is presumed that the Vigilance Department of the State is manned by law knowing persons at least having the knowledge regarding the period of limitation for filing a criminal appeal in the High Court. Even then, the Department retained the file as per the contents of the application and the supporting affidavit for a period of more than 3 months and thereby allowed the prescribed period of limitation to expire. There being no explanation whatsoever in the application as to why a timely decision could not be taken by the department, *prima facie* the delay is attributable to gross negligence or the period of limitation was allowed to expire intentionally.

9. The Respondents were being prosecuted for purchase/ manufacture/supply of sub-standard medicines meant for the public at large and the amount paid as price of such medicines is stated to be considerable. Therefore, the matter was of great public importance which required due, proper and timely examination at all levels which does not appear to have been done.

10. In view of the nature of the case against the Respondents, its public importance and the *prima facie* conclusion that the delay is the result of gross negligence or is an intentional act, I am of the view that the public interest and cause of justice should not suffer because of the delay caused intentionally or otherwise or by negligence attributable to individual official(s) and not to the State.

11. In view of the above discussion, the present application is allowed and the delay in filing the appeal is condoned.

12. In view of the *prima facie* conclusions arrived at by me above about the causes of delay, a copy of this order be sent to the State through its Chief Secretary for looking into the matter as to why, the file remained held up with one department only for such a unduly long period for taking a simple decision

whether appeal in the case should be preferred or not and to take action in the matter as permissible under the law and rules.