

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL REVISION No. 2670 of 2024

GOVIND SASI

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

(BY SHRI SURENDRA TUTEJA, ADVOCATE)

(BY SHRI H.S. RATHORE, GOVERNMENT ADVOCATE)

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Heard on : **03.07.2024**

Pronounced on : **12.07.2024**
.....

This revision having been heard and reserved for judgment, coming on for pronouncement this day, the Court passed the following :

ORDER

This criminal revision has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 being crestfallen by the order dated 14.05.2024 passed by the learned Sessions Judge, District Dewas (M.P.) in MJCR No. 430/2024 whereby the learned Judge has rejected the application filed by the petitioner under Section 5 of the Limitation Act for condonation of delay of 05 years, 06 months and 18 days.

2. As per prosecution story, on 23.01.2013, police station bank note press was informed by the informant that some vehicles from Maksi were carrying bulls and were going to Maharashtra. Thereafter, police stopped vehicles of the present applicant and seized 3 bulls from the aforesaid vehicle and after conclusion of the trial, vide order dated 15.10.2018 passed in MJCR NO. 493/2013, the learned trial Court has convicted the petitioner under Section 6/9 of M.P. Govansh Vadh Pratishedh Adhiniyam, 2004 and sentenced him to

undergo for 1 year R.I. with fine of Rs.5,000/- and default stipulation.

3. Learned counsel for the petitioner has submitted that the order of the trial Court was passed on 15.10.2018 in MJCR No. 493/2013 but petitioner went outside for work and due to the pandemic COVID-19 from 2020 to 2021 and also having no knowledge about the law, he did not contact with his counsel, the petitioner filed an application under Section 5 of Limitation Act for condonation of delay of 05 years, 06 months and 18 days which was rejected by the learned trial Court only on the ground of delay without going to the merits of the case. He has further submitted that when the knowledge of the final order was derived to the petitioner, the petitioner was steadfast in approaching the Court after making inquiries and obtaining certified copies of the proceedings and final order. On these grounds, he has prayed for condonation of delay for a period of 05 years, 06 months and 18 days and allow the petition.

4. Learned Government Advocate for the respondent/State has opposed the prayer and submitted that the petitioner is supposed to have knowledge about the court proceedings. The petitioner has filed the application for condonation of delay with bad intention. The learned trial Court has not committed any error in rejecting the application. Hence, the learned Govt, Advocate for the respondents prays for dismissal of the petition.

5. On this aspect, it is pertinent to mention here that the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3/2022 vide order dated 10.01.2022** has directed that the period between 23.03.2020 to 28.02.2022 would not be considered for computing limitation and in the event of expiry of limitation within such period, an additional period of 90 days shall be granted

for all such matter. In light of aforesaid additional grace period of 90 days since 28.02.2022 and summer vacation of the Hon'ble High Court till 14.06.2022, the delay in filing the instant criminal appeal would only commence from 15.06.2022 onwards.

6. In view of the aforesaid legal proposition, the above period adjudicated by Hon'ble Apex Court in **Suo Moto petition (supra)** should be deducted from the period of limitation. However, the learned Appellate Court has not alleviated that exemption period ordained by the Hon'ble Apex Court and having mentioned the whole period, rejected the application for condonation of delay which is against the intention of the provisions of Limitation Act. It is also worth notable that the appellant has been languishing in custody since 12.04.2024. Hence, present appeal is required to be decided on merits of the case. The learned Appellate Court should adopt justice oriented approach.

7. It is also well-settled that the explanation put forward in the application for condonation of delay should be considered alongwith the merits of the appeal and if serious points of law are prima facie found to have been raised in this appeal, the application for condonation of delay is not to be lightly brushed aside taking into account only the length of delay of the appeal.

8. From the face of record, it seems that the learned Appellate Court has passed this order in haste which is against the sanctity of the justice. It is also well established that the order of conviction and sentence should be examined substantially, when the convicted person impugns his conviction before the Appellate Court. In the case at hand, the appellant is in jail and wants to challenge the order of conviction and sentence, his appeal should be considered on merits.

9. On this aspect, in the case of **M.K. Prasad Vs. P. Arumugam, AIR 2001 SC 2497**, the Hon'ble Apex Court endorsing its earlier view held as under :-

In construing Section 5 of the Limitation act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. While dealing with the scope of Section 5 of the Limitation Act, this Court in **Ramlal & Ors. v. Rewa Coalfields Ltd. [AIR 1962 SC 361]** held :-

"Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such period. This section raises two questions for consideration. First is, what is sufficient cause; and the second, what is the meaning of the clause "within such period"? With the first question we are not concerned in the present appeal. It is the second question which has been decided by the Judicial Commissioner against the appellant. He has held that "within such period" in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner has held that "within such period" means "the period of the delay between the last day for filing the appeal & the date on which the appeal was actually filed" he would undoubtedly have come to the conclusion that

the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the effect of his judgment. That is why it is unnecessary for us to consider what is "a sufficient cause" in the present appeal. It has been urged before us by Mr. Andley, for the appellant, that the construction placed by the Judicial Commissioner on the words "within such period" is erroneous.

In construing S. 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 lightly 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*, ILR 3 Mad 269 :-

"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 bonafide is imputable to the appellant."

10. In conspectus of the aforesaid law, it can be held that the Limitation law is a procedural law and approach for consideration of delay should be liberal, sympathetic and justice oriented. Generally, the delay may be condoned unless and until it is found inordinate and malafide. Opportunity of hearing on merit should be given to a party, specially when he has been convicted and sentenced by the impugned judgment. The purpose of Limitation Act is no way to defeat the justice on account of technicalities unless the motive is found to be malafide.

11. Accordingly, allowing this revision petition, the impugned order dated 14.05.2024 is hereby quashed and the learned Appellate Court is directed to decide the appeal after considering the merits of the case, preferably within a period of three months from the date of receipt of certified copy of this order positively.

12. With the aforesaid, the appeal stands disposed of.

13. A copy of this order be sent to concerned trial Court for necessary compliance.

(PREM NARAYAN SINGH)
JUDGE