

A. There are material contradictions in the statement of informant-PW-1 and eye-witness- PW-6.

B. The prosecution has failed to explain why no FIR was registered with regard to murder of Muddu, brother of the appellant, who according to PW-6 had a scuffle with deceased – Dinesh at the place of incident when, deceased Dinesh, brother of informant, was fired by the appellant and murdered.

C. It is the case of the prosecution that many people at the spot caught hold of Muddu and gave him merciless beatings with sticks and iron rods which resulted into breaking of all the bones of his body, he was murdered at the spot but no police action was taken despite a cognizable offence was committed.

D. The appellant was never arrested at the spot and was arrested after one year of incident and no firearm was recovered from him.

E. The police did not recover any empty cartridge at the spot and never sent it for forensic examination.

F. As per PW-1, the firearm injury was caused to deceased Dinesh from point blank range whereas the statement of PW-2- Doctor who conducted the post-mortem reflects that no blackening or tattooing was found which show that the fire was shot from a distance.

G. As per the I.O., PW-3, he first prepared the Panchayatnama of Muddu, brother of appellant, and then of Dinesh, brother of the informant. Even PW-2, Dr. Narendra Kumar who conducted the post-mortem stated that he first conducted the post-mortem of Muddu and then of Dinesh, which raises a suspicion that Muddu was murdered prior to murder of Dinesh and in the absence of any FIR or investigation being conducted regarding death of Muddu who was beaten to death by the mob at the

spot, it is apparent that no proper investigation was conducted by the police. Therefore, the appellant is entitled to be given benefit of doubt.

H. Lastly, the appellant is in judicial custody for 17 years of actual sentence and 20 years of total sentence with remission, having no criminal history, as per the State police is entitled to pre mature release but is case was never processed.

37. In view of above, we allow this appeal and set aside the impugned judgment of conviction and order of sentence.

38. The appellant who is in judicial custody be released forthwith, if he is not involved in any other case.

39. Record and proceedings of the Trial Court be transmitted to it forthwith.

40. The fee of Sri Ajay Shankar, learned legal aid counsel, be released by the High Court Legal Services Committee.

(2024) 10 ILRA 12
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.10.2024

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

First Appeal From Order Defective No. 129 of
2024

Ms. Supreme Transport Co., Lucknow
...Appellant
Versus
Smt. Suman Devi & Anr. ...Respondents

Counsel for the Appellant:
Afaq Zaki Khan

Counsel for the Respondents:

Civil Law - Motor Vehicle Act, 1988 - Sections 165, 166 & 140 - Condonation of delay - Plea of Pardanashin lady not taken in affidavit filed along with application for condonation of delay, but such was taken in supplementary affidavit without disclosing as to she was Pardanashin lady - Not taken earlier before Tribunal - A litigant, who was negligent that he/she would not inquire for status of case for such a long period in which allegations are against him/her and he/she has put in appearance and filed written St.ment and documents, was not prevented from preferring appeal in time - Appellant failed to show even a single ground for condonation of such a long delay of 3107 days and destroy right of parties - Failed to disclose that who was person on whose shoulder he has put burden of such a long delay even for period of four years after his death, therefore, grounds are nothing but concocted story to get delay of such a long period condoned in matter of accident claim, in which he had contested case throughout and after affording sufficient opportunity of hearing, tribunal passed impugned award. (Para 7, 8, 14)

Appeal Dismissed. (E-13)

List of Cases cited:

1. Maniben Devraj Shah Vs Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157, (Para 24, 25)
2. K.B. Lal (Krishna Bahadur Lal) Vs Gyanendra Pratap & ors.; 2024 (42) LCD 828, (Para 10)
3. Sheo Raj Singh & ors. Vs U.O.I. & anr.; (2023) 10 SCC 531, (Para 31, 32)
4. N. Balakrishnan Vs M. Krishnamurthy; AIR 1998 Supreme Court 3222

(Delivered by Hon'ble Rajnish Kumar, J.)

(Application No. IA/1/2024)

1. Heard Shri Aftab Zaki Khan, learned counsel for the appellant.

2. This highly belated F.A.F.O. under Section 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and order dated 01.01.2014 passed in claim petition no.276 of 2012 (Suman Devi Vs. M/S Supreme Transport Company and Another) under Section- 165, 166 and Section 140 of Motor Vehicle Act, 1988 by Motor Accident Claim Tribunal/ District Judge, Lucknow alongwith an application for condonation of delay in filing appeal.

3. The office has reported a delay of 3107 days in filing the appeal. The appeal under Section 173 of Motor Vehicles Act, 1988 may be preferred within ninety days from the date of award. Second proviso to Section 173 provides that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Therefore, this Court has to see as to whether the appellant was prevented by sufficient cause from preferring the appeal within time or not.

4. The ground for condonation of delay has been given in paragraph nos.3, 4 and 5, which are extracted here-in-below:-

"3. That, in this case during pendency of claim petition after filing the objection against the claim petition counsel of appellant has never informed the appellant about the status of the claim petition.

4. That, One Sri. Sujaudin was doing pairvi from the side of appellant and he expired 4 years ago.

5. That, the appellant was not aware about the Judgement and award dated 01-01-2014 and first time he came to know about the judgement when recovery notice has been issued on 22-07-2024 and served upon him on 30-07-2024. Copy of recovery letter and notice are being annexed as annexure no.1 to this affidavit."

5. Since the ground was not sufficient for such a long delay, therefore, the appellant after arguing at some length had prayed for and was granted time on the last date for filing better affidavit in support of the application for condonation of delay. The appellant has filed a supplementary affidavit in support of application for condonation of delay. The supplementary affidavit indicates further grounds in paragraph nos.3 and 4, which are extracted here-in-below:-

"3. That, one Shujauddin, who was doing pairavi on behalf of the appellant before the M.A.C.T expired on 21.07.2020 but his family member could not obtain the Death Certificate from Nagar Nigam as such it was not necessary for them.

4. That, it is also pertinent to mention here that Appellant is a Pardanashin Lady and Husband of the Appellant namely Mohammad. Laiq Khan has also expired during Covid-19 on 20.05.2021, as such appellant was in Trauma, therefore delay has been caused."

6. In view of above, it is apparent that no ground for condonation of such a long period has been given. Only pleas have been taken that the counsel had never informed about status of claim petition and one Shri Sujauddin was doing pairvi from the side of the appellant and he died four years ago. Who was Sujauddin and why he

was doing Pairvi on behalf of the appellant, when the case was contested by the appellant before the tribunal by filing written statement and the relevant documents on record and husband of appellant was alive, have not been disclosed? Even otherwise, as per own admission of the appellant, the said Sujauddin had died on 21.07.2020 i.e. after more than six years of passing of the impugned judgment and award and since then also more than four years have passed. Therefore firstly it has not been disclosed as to who was Sujauddin and why he was doing Pairvi. Even if any such person was doing Pairvi, then the plea that the counsel had not informed about claim petition to the appellant is not tenable. Secondly, if any such person was doing Pairvi, this Court is unable to comprehend that he would not have told to the appellant about the status of claim petition because without instruction and support of the appellant he would not have been doing Pairvi of case. Even otherwise if the appellant had not tried to know about the status of case for such a long period and even after his death in 2020, the appellant has been thorough negligent in doing Pairvi of case and it can not be said that the appellant was prevented from sufficient cause in preferring appeal in time.

7. Plea of Pardanashin lady was not taken in the affidavit filed in support of the application for condonation of delay but a plea has been taken in supplementary affidavit without disclosing as to how the appellant is Pardanashin lady. Even otherwise she is the sole proprietor of the appellant transport company as admitted by learned counsel for the appellant, therefore, it is apparent that the plea has been taken only because the grounds taken by the appellant in the affidavit filed in support of

the application for condonation of delay are not sufficient. On a query being put as to whether the plea of Pardanashin was taken before the tribunal or not also, learned counsel for the appellant has not given any reply. However, the impugned judgment and award does not indicate that any such plea was taken before the tribunal, therefore, it is nothing but an after thought just to get the delay condoned in this appeal.

8. In view of above, the grounds taken by the appellant of such a long delay are not sufficient to condone the delay. A litigant, who is such negligent that he/she would not inquire for the status of case for such a long period in which the allegations are against him/her and he/she has put in appearance and filed written statement and documents, can not be said to was prevented from sufficient cause from preferring appeal in time because if he/she has not pursued the case diligently and has been negligent in doing so can not be said to have been prevented, therefore the grounds taken are nothing but excuses for such a long delay. Such a litigant is not entitled for any discretion of Court. Therefore no fruitful purpose will be served even by issuing notices to the respondents for calling objection on the application for condonation of delay, when this Court is satisfied that the grounds taken for condonation of delay of such a long period are not sufficient at all.

9. The Hon'ble Supreme Court, in the case of **Maniben Devraj Shah Vs. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157**, has 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. The relevant paragraphs 24 and 25 are extracted here-in-below:-

"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.

25. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

10. The Hon'ble Supreme Court, in the case of **K.B. Lal (Krishna Bahadur Lal) Vs. Gyanendra Pratap and Other; 2024 (42) LCD 828**, has held that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant. The relevant paragraph 10 is extracted here-in-below:-

10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in

cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See P.K. Ramachandran v. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:

“21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. 21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. 21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice. 21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

.....” (emphasis supplied)

Having perused the application under Order IX, Rule 7 of the CPC dated 23.11.2020, filed by the appellant, and the accompanying affidavit, wherein the appellant had sought the benefit of Section 5 of the Limitation Act, for condonation of a delay of almost 14 years, we find there

was no satisfactory or reasonable ground given by the appellant explaining the delay. We say this for two reasons. First, it is an admitted position by the appellant himself that upon an inspection of the case file in the year 2011, he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against him. What prevented the appellant from filing the application under Order IX, Rule 7 that year itself has not been satisfactorily explained at all, as the first application was only filed in the year 2017. Secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application does not find support from the records. What is clear is that the appellant has been grossly negligent in pursuing the matter before the trial court. Thus, the trial court, the revisional court as well as the High Court, were correct in dismissing the belated claim of the appellant. We find no reason to interfere with the impugned order dated 19.05.2022 of the High Court of Judicature at Allahabad.

The appeal stands dismissed."

11. This Court has to see the sufficient 'explanation' for condonation of delay and not the 'excuses' for condoning the delay as held by the Hon'ble Supreme Court in the case of **Sheo Raj Singh & Others Vs. Union of India and Another; (2023) 10 SCC 531**. The relevant paragraphs 31 and 32 are extracted here-in-below:-

"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."

12. Learned counsel for the appellant relying on the judgment of the Hon'ble Supreme Court, in the case of **N. Balakrishnan Vs. M. Krishnamurthy; AIR 1998 Supreme Court 3222**, submits

that the delay may be condoned and appeal may be heard and decided on merit.

13. The Hon'ble Supreme Court, in the aforesaid case relied by learned counsel for the appellant, has held that Rules of Limitation are not meant to destroy the right 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. This case is not of any help to the appellant for condoning delay of such a long period. The relevant paragraph is extracted here-in-below:-

"Rule of limitation are not meant to destroy the right 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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right 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."

14. In view of above, the delay can be condoned if sufficient ground is shown for condonation of delay. However as indicated

above, what to say of sufficient ground, the appellant has failed to show even a single ground for condonation of such a long delay of 3107 days and destroy the right of parties. He has even failed to disclose as to who was the person on whose shoulder he has put the burden of such a long delay even for the period of four years after his death, therefore, the grounds shown by the appellant are nothing but a concocted story to get the delay of such a long period condoned in the matter of accident claim, in which he had contested the case throughout and after affording sufficient opportunity of hearing the tribunal passed the impugned judgment and award.

15. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the appellant has failed to show that the appellant was prevented from sufficient cause to file the appeal and only excuses have been given, therefore, the application for condonation of delay is misconceived and liable to be dismissed.

16. The application for condonation of delay is **dismissed**.

17. Consequently, the appeal is **dismissed**.

(2024) 10 ILRA 18

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 25.10.2024

BEFORE

**THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE VIKAS BUDHWAR, J.**

Special Appeal No. 963 of 2024

**Mrs. Jayshree Kailash Wani ...Appellant
Versus
Official Liquidator ...Respondent**