

***HON'BLE SRI JUSTICE SUBHENDU SAMANTA**
+CRIMINAL REVISION CASE No.903 of 2024

%05.02.2026

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- 1.THE MANAGEMENT OF LEKCON INFRASTRUCTURE PRIVATE LIMITED, DOOR NO. 3-6/9, NARSINGI HEIGHTS AND VILLAGE, REJENDRANAGAR MANDAL, RANGA REDDY DISTRICT, HYDERABAD - 500 079.
- 2.YELAMANCHILI GOWRI SHANKAR @ GOWRI,, S/O. PURNACHANDRA RAO, AGED ABOUT 35 YEARS, PRO.LEKCON INFRA PVT. LTD., D.NO. 3-6/9, NARSINGI HEIGHTS AND VILLAGE, REJENDRANAGAR MANDAL, RANGA REDDY DISTRICT, HYDERABAD - 500 079.

...PETITIONERS

AND

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- 1.THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATI.
- 2.THE STATE, REPRESENTED BY THE INSPECTOR OF POLICE, ARAKU VALLEY CIRCLE OF DUMBRIGUDA POLICE STATION, ASR DISTRICT.
- 3.THE ADDITIONAL PUBLIC PROSECUTOR, OF IV ADDITIONAL DISTRICT AND SESSIONS COURT, VISAKHAPATNAM.

...RESPONDENTS

!Counsel for the petitioners : SRI ADDEPALLI SURYANARAYANA,
LEARNED SENIOR COUNSEL
Representing Sri Nooka Jagannadham
Learned Counsel for the Petitioners

^Counsel for the respondents : LEARNED ADVOCATE GENERAL

<Gist:

>Head Note:

? Cases referred:

1. AIR 1987 SC 1353
2. 2025 Law Suit (SC) 1254
3. (2024) 7 SCC 433
4. (2020) 10 SCC 616
5. (1981) 2 SCC 758
6. (2023) 10 SCC 531
7. (2012) 3 SCC 563

HIGH COURT OF ANDHRA PRADESH
CRIMINAL REVISION CASE No.903 of 2024

Between:

- 1.THE MANAGEMENT OF LEKCON INFRASTRUCTURE PRIVATE LIMITED, DOOR NO. 3-6/9, NARSINGI HEIGHTS AND VILLAGE, REJENDRANAGAR MANDAL, RANGA REDDY DISTRICT, HYDERABAD - 500 079.
- 2.YELAMANCHILI GOWRI SHANKAR @ GOWRI,, S/O. PURNACHANDRA RAO, AGED ABOUT 35 YEARS, PRO.LEKCON INFRA PVT. LTD., D.NO. 3-6/9, NARSINGI HEIGHTS AND VILLAGE, REJENDRANAGAR MANDAL, RANGA REDDY DISTRICT, HYDERABAD - 500 079.

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- 1.THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATI.
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- 3.THE ADDITIONAL PUBLIC PROSECUTOR, OF IV ADDITIONAL DISTRICT AND SESSIONS COURT, VISAKHAPATNAM.

RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 05.02.2026.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair Copy of the Judgment? | Yes/No |

JUSTICE SUBHENDU SAMANTA

APHC010398642024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

WEDNESDAY, THE FIFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 903/2024

Between:

- 1.THE MANAGEMENT OF LEKCON INFRASTRUCTURE PRIVATE LIMITED, DOOR NO. 3-6/9, NARSINGI HEIGHTS AND VILLAGE, REJENDRANAGAR MANDAL, RANGA REDDY DISTRICT, HYDERABAD - 500 079.
- 2.YELAMANCHILI GOWRI SHANKAR @ GOWRI,, S/O. PURNACHANDRA RAO, AGED ABOUT 35 YEARS, PRO.LEKCON INFRA PVT. LTD., D.NO. 3-6/9, NARSINGI HEIGHTS AND VILLAGE, REJENDRANAGAR MANDAL, RANGA REDDY DISTRICT, HYDERABAD - 500 079.

...PETITIONERS

AND

- 1.THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATI.
- 2.THE STATE, REPRESENTED BY THE INSPECTOR OF POLICE, ARAKU VALLEY CIRCLE OF DUMBRIGUDA POLICE STATION, ASR DISTRICT.
- 3.THE ADDITIONAL PUBLIC PROSECUTOR, OF IV ADDITIONAL DISTRICT AND SESSIONS COURT, VISAKHAPATNAM.

...RESPONDENTS

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision

Case, the High Court may be pleased to begs to this present Memorandum of Criminal Revision Case against the order passed in Crl.M.P. No. 182 of 2023 on the file of the Sessions Judge, Visakhapatnam (E-Courts Crl.M.P.No. 731 of 2023 in Unnumbered Crl.R.P. of 2023, dt.31-5-2024,

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed in Crl.M.P. No. 182 of 2023 (E-Courts Crl.M.P.No. 731 of 2023 in unnumbered Crl.R.P.No. of 2023) on the file of the Sessions Judge, Visakhapatnam, dt.31-5- 2024,

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including appearance of the petitioners in Crl.R.P.No.7 of 2024 on the file of the XII Additional District & Sessions Judge, Visakhapatnam, pending in Crl.R.C.No. 903 of 2024 before this Hon'ble Court, and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to extend the interim orders dated 18.12.2024 granted by this Hon'ble Court in Crl.R.C.No. 903 of 2024 pending disposal of the above said Criminal Revision and to pass

Counsel for the Petitioners:

1.NOOKA JAGANNADHAM

Counsel for the Respondents:

1.PUBLIC PROSECUTOR

The Court made the following:

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE No.903 OF 2024

ORDER:

1. The instant Criminal Revision Case is preferred against the order dated 31.05.2024, passed in CrI.M.P.No.182 of 2023, under Rule 127 of the Criminal Rules of Practice and Circular Orders 1990, read with Section 5 of the Limitation Act, 1963 whereby the learned Sessions Judge has condoned the delay of 1803 days in filing a Criminal Revision petition.
2. The brief facts of the case are that initially, Crime No.2 of 2016 of Dumbriguda Police Station, Visakhapatnam, was registered against the petitioners under Sections 41, 102 and 120(b) of the Indian Penal Code, 1860 [for short '**IPC**'], Section 13(2) of the (Unlawful Activities (Prevention) Act, 1967 [for short, '**the UAPA Act**'] and Sections 4 and 20(A) of the Telegraphic Act 1885 [for short, '**the Telegraphic Act**']. After completion of the investigation, the police filed a charge sheet before the Judicial Magistrate of First Class, Araku, who has taken cognizance of the offence and numbered it as C.C.No.30 of 2017. Thereafter, the accused filed a petition CrI.M.P.No.320 of 2017 for discharge. The learned Magistrate, by an order, dated 09.04.2018, has allowed the CrI.M.P. No.320 of 2017 and the accused were discharged. Aggrieved by the order, dated 09.04.2018, the

prosecution filed a Criminal Revision Petition before the Sessions Court, Visakhapatnam, along with an application CrI.M.P. No.731 of 2023 under Section 5 of the Limitation Act seeking condonation of a delay of 1803 days. The learned Sessions Judge allowed the application for condonation of delay by passing the order impugned in the instant criminal revision case.

3. Heard the submissions of the learned Senior Counsel appearing for the petitioner and the learned Advocate General.

4. **Brief submissions on behalf of the petitioners:**

a) It is the contention of the petitioners that the impugned order passed by the learned Sessions Judge is illegal and improper. The learned Sessions Judge allowed the application without following the guidelines laid down by the Hon'ble Supreme Court. The prosecution has not assigned any sufficient reason for condonation of such inordinate delay. The affidavit filed in support of the application does not contain any reason as to why the prosecution failed to challenge the order of discharge within the prescribed time. It is further submitted that the delay is not attributable to administrative reasons. Moreover, the Hon'ble Supreme Court has time and again as well as in the recent time has deprecated the practice of government authorities causing delay.

- b) It is further submitted that the expression “sufficient cause” under Section 5 of the Limitation Act requires not only an explanation for the delay beyond the prescribed period of limitation, but also requires a satisfactory justification demonstrating the circumstances under which the applicant was prevented from filing the application within the statutory time. The Hon’ble Supreme Court has time and again observed that State or its instrumentalities shall stand on the same footing as private litigants and no preferential indulgence in limitation matters should be shown merely due to practical considerations. He further submits that reliance on government lethargy, procedural bottlenecks, or departmental inefficiency cannot constitute sufficient cause.
- c) The learned counsel for the petitioner further submits that the learned Sessions Judge has passed the impugned order following the law laid down by the Hon’ble Supreme Court in **Collector, Land Acquisition, Anantanag and Another v. MST Katiji and Others**¹, wherein the Hon’ble Supreme Court has condoned a delay of only four days, whereas in the present case, the delay is more than five years. The learned counsel further submits that, by virtue of recent pronouncements of the Hon’ble Supreme Court, the notion of deciding an application under Section 5 of the

¹AIR 1987 SC 1353

Limitation Act has been drastically changed. The Hon'ble Supreme Court has time and again observed that there is a distinction between a bona fide explanation for delay and mere excuses. The learned counsel further submits that in case of bona fide explanation, the delay may be condoned, but in case of excuse, no leniency can be shown. In support of the contention, the learned counsel places reliance on the judgment of the Hon'ble Supreme Court in **Shivamma (Dead) by LRs vs. Karnataka Housing Board and Others**².

- d) The learned counsel further submits that the prosecution has also adopted another ground for causing the delay due to COVID-19 pandemic. He submits that however, the Hon'ble Supreme Court has specifically observed in **Delhi Development Authority v. Tejpal and Others**³ that extension of period of limitation on account of the COVID-19 pandemic is not available when the limitation period expires prior to COVID-19 pandemic. In the present case, the limitation for filing the revision petition against the order of discharge had already expired prior to COVID-19 pandemic. Thus, the said ground cannot be considered as good ground. On the basis of the above submissions, the petitioner seeks to set aside the impugned order.

²2025 LawSuit (SC) 1254

³(2024)7 SCC 433

5. Brief submissions on behalf of the respondents:

a) The learned Advocate General submits that there is no illegality in the impugned order passed by the learned Sessions Judge. He further submits that the learned Sessions Judge, after considering the affidavit filed on behalf of the prosecution, exercised his discretion to condone the delay. The High Court cannot interfere with the discretion exercised by the learned Sessions Judge. He further submits that there is no illegality in the order passed by the learned Sessions Judge, who followed the decision of the Hon'ble Supreme Court rendered in **Collector, Land Acquisition, Anantnag** case(supra 1). It is the further contention of the learned Advocate General that though the police authority had submitted the charge sheet, the investigation conducted by the Investigating Officer appeared to be suspicious. Thus, an application for further investigation was filed before the learned Magistrate. The said application was turned down. Against such an order, the prosecution has filed a revisional petition before the concerned Sessions Judge. The prosecution was in a reasonable belief that the revision filed against the order refusing further investigation would be allowed. In the meantime, the accused persons filed a discharge petition, which was allowed by the learned Magistrate. The learned Advocate General further submits that the learned Magistrate was not designated as a Special Court to deal with

matters under the UAPA Act. In spite of that, he passed an order of discharge, which is itself without jurisdiction and illegal. He submits that the learned Sessions Judge has examined the entire issue and observed that a case cannot be defeated due to procedural defects. He further submits that due to purely administrative reasons, the delay was occurred, and therefore, the learned Sessions Judge has correctly condoned the delay. In support of his contention, the learned Advocate General has cited the judgments of the Hon'ble Supreme Court in **Bikramjit Singh vs. State of Punjab**⁴ and in **Municipal Corporation of Delhi v. Vrinda Lal Shapur and Another**⁵. The learned Advocate General also pointed out paragraphs 154 to 158 of the judgment of the Hon'ble Supreme Court in **Shivamma's case (supra 2)** referred to by the petitioners to show authority of appellate court to infer discretion exercised by the competent court.

6. FINDINGS OF COURT:

- a) Before deciding the merit of this matter, it is profitable to refer paragraphs 154 to 158 of the **Shivamma's** case.

"[154] A coordinate Bench of this Court in a recent decision of Sheo Raj Singh (supra) speaking through Hon'ble Justice Dipankar Datta, held that there exists a fine distinction between when a court is hearing application for condonation of delay and when it is sitting in appeal over

⁴(2020) 10 SCC 616

⁵(1981) 2 SCC 758

the exercise of discretion granting condonation of delay. In the former, the only material question is whether the delay be condoned or not, whereas in the latter the question is confined to if there has been proper exercise of discretion in favour of grant of such prayer. It further cautioned that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below. The relevant observations read as under: -

"33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa, which in turn relied on the decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha where it has been held that:

"an appellate power interferes not when the order appealed is not right but only when it is clearly wrong"."

(Emphasis supplied)

[155] In Manjunath Anandappa (supra) this Court reiterated that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below. The relevant observations read as under: -

"36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.

37. In U.P. Coop. Federation Ltd. v. Sunder Bros., the law is stated in the following terms:

"8. It is well established that where the discretion vested in the court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have

come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge: but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well established; but, as has been observed by Viscount Simon, L.C., in *Charles Osenton & Co. v. Johnston*

'The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case,'

(Emphasis supplied)

[156] In *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* 1980 2 SCC 593, this Court speaking through the inimitable V.R. Krishna Iyer J. (as his Lordship then was), observed that "an appellate power interferes when the order appealed is not right but only when it is clearly wrong". The erudite observations read as under: -

"73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not

when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.
(Emphasis supplied)

[157] However, the aforesaid observations must not be viewed in isolation from the immediately preceding paragraph. The observations therein are significant, for a holistic understanding. This Court in Gujarat Steel Tubes (supra) whilst holding the aforesaid, elaborated on when a court in appellate jurisdiction may be compelled to interfere with the order of a court below. It observed that where such order was vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure, and any other defects of like nature, the appellate court would be justified to intervene. The relevant observations read as under:

"72. Once we assume that the jurisdiction of the arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Article 226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it is wrong. It can be quashed only if it is vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order. jurisdictional failure and the like."
(Emphasis supplied)

[158] Deciding whether there was any proper and judicious exercise of discretion to condone the delay or not, is a slippery slope. Despite lengthy cautionary tales from this Court of judicial restraint in wantonly interfering with the subjective view of a court below, having been preached for time immemorial, it is plausible for an appellate court to falter in adhering to the same.

b) In the present criminal revision case, the order of the learned Sessions Judge is under challenge, wherein the learned Sessions Judge exercised his discretion for condonation of delay. The same issue was dealt with by the Hon'ble Supreme Court reported in **Sheo Raj Singh (Deceased) through LRs. & Others v. Union**

of India & Another⁶. While deciding such issue, the Hon'ble Supreme Court observed in paragraph 33 that,

"33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa, which in turn relied on the decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha where it has been held that:
"an appellate power interferes not when the order appealed is not right but only when it is clearly wrong"."

- c) Following the aforesaid principle, High Court should not be ordinarily interfered with the exercise of discretion by the courts below. It must be borne in mind that, in the present criminal revision case, the consideration is confined to whether the learned Sessions Judge has exercised his discretion fairly and legally. To decide the issue, let me now consider the affidavit filed by the prosecution before the learned Sessions Judge for condonation of delay. Paragraph 3 of the affidavit filed by the prosecution is required to be set out for proper determination.

"3. The prosecution has not filed the revision petition against the discharge orders dated 09-04-2018 under bona fide belief

⁶(2023) 10 SCC 531

that the further investigation petition would be allowed by the revisional court but the same was dismissed on 05-11-2021. Accordingly this revision petition against discharge of accused is being filed belatedly under bona fide belief that the revisional court would allow the further investigation petition. After the dismissal of the revision on 05-11-2021 there was intervening period of Corona Pandemic where court work suffered due to the Pandemic situation and prior to the entrustment of prosecution to the IVth ADJ Court PP, Visakhapatnam on 16-12-2022 as the earlier to IVth ADJ Court PP, Visakhapatnam. The file and the case were verified by him by gathering all the material papers which were not in order and after verification and consultation with the police C.I. Sri.G.D.Babu, Araku Circle about the delay in filing the present revision steps were taken for filing of present revision and meanwhile new C.I. took charge of Araku Circle. Accordingly there is delay in filing of present revision due to administrative reasons as mentioned above and prosecution prays the Hon'ble Court to condone the delay for filing of this present revision petition. Separate delay condonation petition is being filed by the prosecution for kind consideration of the Hon'ble Court.”

d) On the basis of such pleading, the learned Sessions Judge has dealt with the arguments advanced by the parties and after discussing the relevant citations, observed his findings in paragraph 21 of the impugned order.

“21. Further the procedural defects or delay of the Complainant cannot be banned for the Complainant or boon for the accused in UAPA Act case, thus if the delay is deliberate the Court could have ordered the concerned be handled Under Rule 74 of Criminal Rules of Practice, but no material is available at this juncture. Further no prejudice will be caused to the Respondents in allowing the petition on costs in circumstances of the case and further they can contest the Revision and invite the order or merits, which will be decided as per law.”

e) On a plain reading of the impugned order, it appears that the learned Sessions Judge, while deciding the application under

Section 5 of the Limitation Act, intruded into the merits of the matter. The Division Bench of the Hon'ble Supreme Court, in **Shivamma's** case (supra 2), after following several decisions of the Hon'ble Supreme Court, is of the opinion that merit hunting while deciding a delay condonation application is not permissible. It is profitable to refer to paragraphs 140 and 141 of the said decision.

"[140] However, at the same time, the courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the court, the inquiry is confined to whether "sufficient cause" has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation. The merits of the underlying case are wholly extraneous to this inquiry. If courts were to look into the merits of the matter at this stage, it would blur the boundaries between preliminary procedural questions and substantive adjudication, thereby conflating two distinct stages of judicial scrutiny. The purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay.

[141] Test of "sufficient cause" cannot be substituted by an examination of the merits of the case. Condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain."

- f) In the present case, the discretion exercised by the learned Sessions Judge is in question. Following the decision in **Sheo Raj Singh's** case, the Hon'ble Supreme Court in **Shivamma's** case, has categorized the issue. It is appropriate to refer

paragraphs 159 to 164 of the judgment, which extracted hereunder:

“[159] We are in complete agreement with the decision of this Court in Sheo Raj Singh (supra) as regards the significance of the distinction in scope when a court is hearing application for condonation of delay and when it is sitting in appeal over the exercise of discretion granting condonation of delay.

[160] It is no more res integra that where a court below refused to condone the delay, then the court sitting in appeal would be entitled to consider if delay should be condoned or not afresh, notwithstanding the decision of the lower court. However, some weight and importance would have to be given to the reasons which swayed the court below from refusing to exercise its discretion. Because refusal to condone the delay is also, nevertheless an exercise of discretion to not exercise discretion. However, the scope, available to the appellate court to substitute its findings in such scenarios would enjoy a considerable degree of play in its joints.

[161] However, where a court is sitting in appeal over the exercise of discretion granting condonation of delay, it is only required to see if there was a proper exercise of discretion by the courts below and if the same was for advancing the cause of justice. But the question that we ask ourselves is, what is meant by "proper exercise of discretion"? What does the enquiry into the propriety of discretion encompass?

[162] Proper exercise of discretion in condoning the delay connotes that the such exercise was not improper or unwarranted. This as a naturally corollary would open up an inquiry into the fundamental constituents or ingredients necessary for the exercise of power to condone delay. As such it would require the appellate court to see if the sufficient cause had occasioned during the prescribed period of limitation, if the explanation offered inspires confidence, if the court below in construing "sufficient cause" had ventured into extraneous considerations. Likewise, where a lower court's decision in accepting the

"sufficient cause" is either contrary to the law or suffers from any material irregularity or is vulnerable for lack of evidence, then such an order condoning the delay would be a fit one to be interfered with by the appellate court.

[163] Thus, a two pronged inquiry is required by the appellate court; first, into the existence of a "sufficient cause" and secondly, into the exercise of discretion itself. where the first test is satisfied.

[164] This would necessarily entail the appellate court to look into the material on record, the contents of the explanation that had swayed the mind of the court below. However, the extent to which the court sitting in appeal is to look into the same is confined to ascertaining whether the view taken by the court below is forthcoming and plausible or not. The observations "but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion" made in Manjunath Anandappa (supra) bolster this view. Thus, the appellate court must see if the material on record inspires confidence for accepting the plea of "sufficient cause" and the explanation offered in that regard for the entirety of the period from when the limitation began till the actual date of filing. If the lower court had accepted the explanation capriciously or without proper legal material to support its decision, then the same may be interfered with."

g) In the case on hand, the explanation given by the prosecution for the delay in filing the revision petition before the learned Sessions Judge appears to be purely administrative lethargy on the part of the State Government. Earlier, there are conflicts of opinion of the Hon'ble Supreme Court on this point. In some cases, benefit has been extended to the State on the ground that the decision of the

State is a collective decision and not an individual one, which requires time. Moreover, in some decisions, the Hon'ble Supreme Court has condoned delay in filing application filed by the States. However, the issue was specifically addressed in the case **Postmaster General and Others v. Living Media India Limited and another**⁷ wherein at paragraphs 27 to 30, the Hon'ble Supreme Court observed that,

- “27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.
29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several

⁷ (2012) 3 SCC 563

months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”
- h) After the aforesaid landmark judgment, the law has drastically changed. It is now settled that when delay is occasioned at the behest of the Government, condonation of delay should be an exception and not the rule. Government litigants are not entitled to a different standard than private parties and must demonstrate bona fide and sufficient cause for the delay. In the absence of justification, the delay cannot be condoned merely on the ground of appointment of a new officer or Government Pleader to deal with the case.
- i) In **Bikramjit Singh**'s case (supra 5), the Hon'ble Supreme Court observed that the Magistrate had no power under the UAPA Act and that the case must be tried exclusively by the Special Court designated under the NIA Act. Thus, the order of discharge passed by the learned Magistrate was improper. However, this decision touches the merits of the calendar case and is not

applicable in determining the legality of the discretion exercised by the learned Sessions Judge for condonation of delay.

- j) In **Municipal Corporation of Delhi** (supra 6), the Hon'ble Supreme Court set aside the order passed by the High Court dismissing the revision filed against the order of discharge and observed that the High Court had not followed the change of law. Thereby the delay in filing the revision petition appears to be very technical.
- k) After perusing the relevant citations relied upon by the parties, it appears that speedy justice is the demand of society, the Hon'ble Supreme Court has also changed its approach according to call of society in deciding applications for condonation of delay. In **Shivamma's** case, the Hon'ble Supreme Court has categorically laid down the changed view by placing reliance on several authorities.
- l) In this particular case, the prosecution filed the revision petition challenging the order of discharge with a delay of 1803 days. The cause shown for such delay is purely hypothetical and unbelievable. The explanation that the prosecution was under the belief that the earlier revision petition would be allowed is unacceptable. The approach of the prosecution must also be examined in the context of the earlier revision filed against the order refusing further investigation, which was dismissed for non-

appearance of prosecution and on the ground that the accused had already been discharged, rendering the revision infructuous.

m) The prosecution has also cited excuse of COVID-19 pandemic as a ground for delay. However, the Hon'ble Supreme Court in the case of **Delhi Development Authority v. Tejpal** (supra³) has clarified that only vigilant litigants, who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law, are entitled to the benefit of *suo motu* cognizance of extension of limitation order passed by the Hon'ble Supreme Court in which cases the period of limitation expires between 15.03.2020 to 23.02.2022. In the present case, the period of limitation expired prior to the commencement of the COVID-19 pandemic. Therefore, the prosecution cannot resort to such *suo motu* case.

n) Under the above observation, it appears that the learned Sessions Judge exercised his discretion without adhering to the settled law and the directives of the Hon'ble Supreme Court. Moreover, the learned Sessions Judge entered into the merits of the matter by holding that the limitation is a purely technical issue. Such view is not in conformity with the judgments of the Hon'ble Supreme Court in **Shivamma's** case and other cases. The learned Sessions Judge has not commented a single word in the impugned order as

to whether the cause of delay shown by the prosecution is sufficient or not.

- o) Thus, in my view, the impugned order passed by the learned Sessions Judge appears to be irregular and illegal. The discretion exercised by the Court below is not in conformity with the directions of the Hon'ble Supreme Court, thus, it requires to be set aside.
- p) Under the above observation, the instant criminal revision case has got merit and the same is considered and allowed. The impugned order dated 31.05.2024 passed by the learned Sessions Judge in CrI.M.P. No.182 of 2023 is hereby set aside.

7. Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

JUSTICE SUBHENDU SAMANTA

BV
Note: LR copy to be marked.
b/o. BV