15. In view of the above discussion, I proceed to pass the following order:-

ORDER

I. Criminal application is hereby allowed in terms of prayer clause "B".

II. Criminal application is accordingly disposed of. Rule is made absolute in the above terms.

Result:- Application allowed.

ABC 2016 (II) 543 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(S.G. Shah, J.)

Criminal Misc. Application (For Condonation Of Delay) No. 8967 of 2016 In Criminal Revision Application No. 285 of 2016

Decided on 18 October, 2016

VASANTBHAI SONI ***- Applicant(s).***

Versus

STATE OF GUJARAT & ANR. ***- Respondent(s).***

Law Covered:- ***(A) Interpretation of Statute — Harmonious construction— Meaning of term — "Every day's delay must be explained" — interpretation of — the term does not mean that a pedantic approach should be made — The doctrine must be applied in a rational common sense pragmatic manner. (Para 9)***

(B) Criminal Jurisprudence — Substantial Justice vis-à-vis Technical Considerations — Held, When substantial justice & 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—Condonation of delay — Limitation Act — Section 3. (Para 9)

(C) Criminal Jurisprudence — Condonation of delay — Interest of Justice —Duty of Judiciary — It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds — but because it is capable of removing injustice and is expected to do so — Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal —Delay condoned. (Para 9)

(D) Interpretation of Statute — Harmonious construction— Intention of Legislator — Limitation Act — Section 3 — Condonation of delay — Approach of the Court — Held, only because the Apex Court has not condoned the delay in some of the cited cases — it cannot be said that delay cannot be condoned in all cases after such judgments, even if there is sufficient cause to condone the delay — if there is sufficient reason to condone the delay, irrespective of the cited cases, delay can be condoned. (Para 11)

Facts:- *The petitioner was convicted u/s 138, NI Act. When the order of conviction was challenged, the Sessions Court confirmed the same by rejecting the appeal. While challenging such impugned judgment in filing Revision Petition, there was a delay of 281 days and, therefore, petitioner filed the present application to condone such delay. It was contended by the petitioner that when appeal was heard, practically, their advocate could not remain present which was in-fact recorded by the Sessions Judge. It was observed by the honourable High Court that it can certainly be said that there was sufficient cause for not filing the Revision Petition in time. The delay in filing Revision was condoned.*

Law of relief:- When substantial justice & technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

Held:- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner. 4. 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. (Para 9)

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach 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 accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the - 'State' is the applicant praying for

condonation of delay. In fact experience shows that on account of an impersonal 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 notemaking, file pushing, and passing on- the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the 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 "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. (Para 9)

Whereas atleast decision in ***O.P.Kathpalia Vs.Lakhmir Singh (Dead) & Ors.*** (supra) is by the three Judges bench of the Apex Court wherein delay of more than 6 years was condoned observing that otherwise it would result into miscarriage of justice. Therefore, when there is a judgment by the bench of three Judges of the Apex Court that to avoid miscarriage of justice, delay of even 6 years can be condoned and when the judgments referred and cited herein are yet not overruled or distinguished in any of the later judgment by the Bench of three Judges, only because the Apex Court has not condoned the delay in some of the cited cases, it cannot be said that delay cannot be condoned in all cases after such judgments even if there is sufficient cause to condone the delay. Thus, in general, if there is sufficient reason to condone the delay, irrespective of the cited cases, delay can be condoned. (Para 11)

Counsel:- ***For Applicant(s):*** *Mr Deep D Vyas, Advocate.*
For Respondent(s): *Mr Nikul K Soni, Advocate.*

Cases Referred:-

1. *Maniben Devraj Shah v. Municipal Corporation of Brihan; 2012 (5) SCC 157. (Para 4)*
2. *National Small Industries Corporation Limited v. State (NCT of Delhi); 2009 (1) SCC 407. (Para 4)*
3. *Sanjay Mishra v. Ms. Kanishka Kapoor; 2009 Cri. L. J. 3777.(Para 4)*
4. *Abdul Gafoor Vs. State of Bihar; AIR 2012 SC 640. (Para 7)*
5. *Delhi Development Authority Vs.Bhola Nath Sharma; AIR 2011 SC 428. (Para 7)*
6. *Union of India Vs.Giani; AIR 2011 SC 977. (Para 7)*
7. *Parimal Vs.Veena; AIR 2011 SC 1150. (Para 7)*
8. *State of J & K Vs.Mohmad Maqbool Sofi; AIR 2010 SC 1445. (Para 7)*

9. State of Jharkhand Vs.Ashok Kumar Chokhani; AIR 2009 SC 1927. (Para 7)
10. State of Karnataka Vs.Y.Moideen Kunhi; AIR 2009 SC 2577. (Para 7)
11. State (NCT of Delhi) Vs.Ahmed Jaan; AIR 2009 SC (Supp.) 695. (Para 7)
12. O.P. Kathpalia Vs. Lakhmir Singh (Dead); AIR 1984 SC 1744. (Para 7)
13. Sinik Security Vs.Sheel Bai; AIR 2008 SC 1688. (Para 8)
14. D.D. Vaishnav Vs.State of M.P. AIR 2009 SC 2170. (Para 8)
15. Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara; AIR 2009 SC (Supp.)195. (Para 8)
16. Collector, Land Acquisition, Anantnag & Anr. Vs. Mst.Katiji & Ors.; AIR 1987 SC 1353. (Para 9)

JUDGMENT

S.G. SHAH, J.: - 1. Rule. Mr. Manan Mehta, learned Additional Public Prosecutor waives service of notice of rule for Respondent No.1 - State of Gujarat as well as Mr. Nikul K. Soni, learned -advocate waives service of notice of Rule for Respondent No.2.

2. Heard learned advocates for the respective parties. Perused the record.

3. The petitioner is original accused in Criminal Case No.756 of 2006 preferred by respondent no.2 under Section 138 of Negotiable Instrument Act, wherein, petitioner has been convicted and ordered to undergo imprisonment of 1 year with a direction to pay Rs.10,00,000/- being amount of cheque as compensation to the complainant. When such order of conviction was challenged in Criminal Appeal No.25 of 2012, by impugned judgment and order dated 24.4.2015, the Sessions Court of Vadodara has confirmed the judgment of Chief Judicial Magistrate, Vadodara by rejecting the appeal. While challenging such impugned judgment in filing Revision Petition, there is delay of 281 days and, therefore, petitioner has filed this application to condone such delay. The application has been opposed by the respondent. Whereas, it is contended by the petitioner that when appeal was heard, practically, their advocate could not remain present which is in-fact recorded by the -Sessions Judge in Paragraph 6 of the impugned judgment where it is stated that the learned advocate for the appellant has consistently remained absent and hence stage of argument of the appellant was closed. Thereafter, applicant has applied for certified copies and preferred this application praying to condone the delay.

4. The respondent is relying upon the judgment in the case of ***Maniben Devraj Shah v. Municipal Corporation of Brihan reported in 2012 (5) SCC 157.*** Whereas, petitioner is relying upon the judgment in

the case of ***National Small Industries Corporation Limited v. State (NCT of Delhi) reported in 2009 (1) SCC 407 so also 2009 Cri. L. J. 3777*** between ***Sanjay Mishra v. Ms. Kanishka Kapoor.*** However, at present, we are concerned with the main issue of delay only that whether delay can be condoned or not.

5. Therefore when there is certainly sufficient cause for the petitioner in not challenging the order of warrant referred herein above and therefore there is reason to condone the delay.

6. The petitioner is relying upon several decisions submitting that the law of Limitation is well settled which confirms that no one should be non-suited on technical grounds.

7. Generally Courts should be reluctant to shut out a consideration of the case on merits on the grounds of limitation or any other similar technicality ***(AIR 2012 SC 640 - Abdul Gafoor Vs. State of Bihar);*** if there is delay in filing petition, due to opinion of the advocate on record and the Solicitor General etc., such delay deserves to be condoned ***(AIR 2011 SC 428 Delhi Development Authority Vs.Bhola Nath Sharma);*** there is a strong arguable case on behalf of the appellant and, therefore, the Court should decide the matter on merit by giving the expression sufficient cause a pragmatic justice-oriented approach ***(AIR 2011 SC 977 Union of India Vs.Giani);*** the meaning of the word sufficient is adequate or enough, inasmuch as may be necessary to answer the purpose intended and, therefore, word sufficient embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose. Sufficient cause is a question of - fact and the Court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application ***(AIR 2011 SC 1150 Parimal Vs.Veena);*** if case file has to be routed from various departments before decision to file appeal, it is sufficient cause for condonation of delay ***(AIR 2010 SC 1445 State of J & K Vs.Mohmad Maqbool Sofi);*** while deciding application for condonation of delay, Court cannot go into the merits of the case, if averments made in the application is sufficient to condone the delay, there is no hesitation to condone such delay ***(AIR 2009 SC 1927 State of Jharkhand Vs.Ashok Kumar Chokhani);*** the expression sufficient cause must receive liberal construction to advance substantial justice even condoning delay of more than 6500 when question of law involved ***(AIR 2009 SC 2577 State of Karnataka Vs.Y.Moideen Kunhi);*** and what counts is not length of delay, but sufficiency of cause and

that what constitutes sufficient cause cannot be laid down by hard and fast rules ***[AIR 2009 SC (Supp.) 695 State (NCT of Delhi) Vs.Ahmed Jaan];*** delay of more than six years can also be condoned to avoid miscarriage of justice - ***(AIR 1984 SC 1744 O.P. Kathpalia Vs. Lakhmir Singh (Dead) by 3 Judges bench of Apex Court).***

8. Moreover, atleast in ***AIR 2008 SC 1688 Sinik Security Vs.Sheel Bai, AIR 2009 SC 2170 D.D. Vaishnav Vs.State of M.P.*** and ***AIR 2009 SC (Supp.) 195 Commissioner, Nagar Parishad, Bhilwara Vs.Labour Court, Bhilwara,*** the Apex Court has condoned inordinate delay (769 days, 589 days and 178 days respectively) even by imposing some costs upon the applicant.

9. In ***AIR 1987 SC 1353 Collector, Land Acquisition, Anantnag & Anr. Vs. Mst.Katiji & Ors.,*** the Apex Court has held as under –

The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts 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. And such a liberal approach is adopted on principle as it is realized that:- -

> [1 "Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."]
>
> 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
>
> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not

every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach 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 accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the - 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal 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 notemaking, file pushing, and passing on- the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the 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 "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits.

10. If we scrutinize all other citations, it becomes clear that the delay was not condoned mainly for the reason that either there is

forged statement by the applicant or the cause for delay was shown as loss of paper by the advocate or that the main dispute is falling under Special Legislations like Rent Control Act or Arbitration and Conciliation Act or Consumer Protection Act. Though in some cases, dispute falls within General Law, the second aspect for non-condoning the delay is actual delay in number of days, which is more than 1000 days in 5 cases. Unless there is a similar situation i.e. unless the case in hand falls within a special enactment or - there is inordinate delay beyond couple of years, none of such judgment confirms that delay cannot be condoned even if sufficient cause is shown.

11. Whereas atleast decision in ***O.P.Kathpalia Vs.Lakhmir Singh (Dead) & Ors.*** (supra) is by the three Judges bench of the Apex Court wherein delay of more than 6 years was condoned observing that otherwise it would result into miscarriage of justice. Therefore, when there is a judgment by the bench of three Judges of the Apex Court that to avoid miscarriage of justice, delay of even 6 years can be condoned and when the judgments referred and cited herein are yet not overruled or distinguished in any of the later judgment by the Bench of three Judges, only because the Apex Court has not condoned the delay in some of the cited cases, it cannot be said that delay cannot be condoned in all cases after such judgments even if there is sufficient cause to condone the delay. Thus, in general, if there is sufficient reason to condone the delay, irrespective of the cited cases, delay can be condoned.

12. Therefore, the judgment in the case of ***Maniben*** (Supra) alone cannot be taken into consideration while deciding such application to condone the delay but even in such judgment, it is specifically emphasized that expression "Sufficient Cause" should be construed liberally on facts without any hard and fast rule.

13. In view of what is emerging from the record and the application, it can certainly be said that there is sufficient cause for not filing the Revision Petition in time.

14. In view of above facts and circumstances, application is allowed as prayed for. Thereby, delay in filing Revision is condoned. Rule is made absolute to that extent only.

***Result*:-** Application allowed.