

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:60164

Court No. - 16**Case :-** CRIMINAL MISC. WRIT PETITION No. - 6409 of 2024**Petitioner :-** Shyamji Tripathi**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Deptt. Lko And Another**Counsel for Petitioner :-** Suresh Kumar Upadhyay, Ashutosh Pandey**Counsel for Respondent :-** G.A.**Hon'ble Shamim Ahmed, J.**

1. Heard Sri Ashutosh Pandey, learned counsel for the petitioner and Sri Rajeev Verma, learned A.G.A.-1 for the State.

2. This writ petition has been filed with the following prayer:

"i) A writ, order or direction in the nature of Certiorari thereby quashing the impugned order of the learned Session Judge, District and Session Judge, Ambedkar Nagar dated 08.09.2011 passed in Case No. 174/2011, whereby the learned Session Judge granted police protection to opposite party No.2, as contained in Annexure No.1 to this writ petition.

ii) A writ, order or direction in the nature of Mandamus directing and commanding the opposite parties not to harass the petitioner;

iii) A writ, order or direction in the nature of Mandamus directing and commanding the opposite parties not to lodge frivolous cases against the petitioner"

3. Learned counsel for the petitioner submits that vide impugned order dated 08.09.2011 passed in Case No. 174/2011: State Vs Shyam Ji Tiwari, learned Session Judge granted police protection to opposite party No.2 while he is in District Ambedkar Nagar and the said police protection

continues even today. Learned counsel for the petitioner further submits that the impugned order is passed without application of mind, as the opposite party No.2 is criminal and many cases are pending against him.

4. Sri Rajeev Verma, learned A.G.A.-1 submits that there are five criminal cases against the petitioner, reference of which has been given on page 21 of the writ petition i.e. Case Crime No.220/10 under Sections 147, 447, 504, 506 I.P.C., Case Crime No. 174/11, under Section 419/420/467/468/471 I.P.C., Case Crime No. 273/13, under Sections 341/306 I.P.C., Case Crime No. 24/14, under Section 323/504/452 I.P.C. and Case Crime No. 56/82 under Section 147, 148, 149, 302 I.P.C..

5. Learned A.G.A.-1 further submits that the impugned order dated 08.09.2011 has been challenged after 13 years and regarding delay no explanation/sufficient cause has been given in any paragraph of the writ petition. He further submits that the petitioner has not filed complete order sheet and the current status to the case in which the impugned order has been passed. The writ petition is totally frivolous and is liable to be dismissed. However, on the ground of delay itself the present writ petition is liable to be dismissed, even though the petitioner has not filed any document or order to show before the court that the impugned protection given to the opposite party No.2 vide order dated 08.09.2011 is still continuing.

6. After considering the argument, as advanced by learned counsel for the parties and after perusal of the entire averment made in the writ petition, this court is of the view that the petitioner has approached this Court at a highly belated stage after about 13 years without any

explanation/sufficient cause and prayed for quashing of the impugned order dated 08.09.2011. A petition must be filed within a reasonable time and it should not be vitiated by inordinate delay and laches on the part of the petitioner. As per the record there are five criminal cases against the petitioner and even though the ground and averment made in the writ petition is neither acceptable and trustworthy.

7. The expression “sufficient cause” in Section 5 of Limitation Act, 1963 has been held to receive a liberal construction so as to advance substantial justice and generally a delay in preferring the case may be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation of delay. In **Collector, Land Acquisition Vs. Katiji, 1987(2) SCC 107**, the Court said, that, when substantial justice and technical considerations are taken 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. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. In **P.K. Ramachandran Vs. State of Kerala, AIR 1998 SC 2276** the Court said:

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.”

9. The Rules of limitation are not meant to destroy rights of parties. They virtually take away the remedy. They are meant with the

objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come 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. The statute providing limitation is founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). It is for this reason that when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of finality. Though it cannot be doubted that refusal to condone delay would result in foreclosing the suiter from putting forth his cause but simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

10. There is no presumption that delay in approaching the court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words "sufficient cause" show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time

is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.

11. I need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing “sufficient cause” under Section 5 of Act, 1963 and it would be suffice to refer a very few of them besides those already referred.

12. In **Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 SC 575** a three Judge Bench of the Court said, that, unless want of bona fide of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

13. The Privy Council in **Brij Indar Singh Vs. Kanshi Ram ILR (1918) 45 Cal 94** observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the aforesaid decision of Privy Council as repeatedly been referred to, and, recently in **State of Nagaland Vs. Lipok AO and others, AIR 2005 SC 2191**.

14. In **Vedabai @ Vijayanatabai Baburao Vs. Shantaram Baburao Patil and others, JT 2001(5) SC 608** the Court said that under Section 5 of Act, 1963 it should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard and the basic guiding factor is advancement of substantial justice.

15. In **Pundlik Jalam Patil (dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Anr. (2008) 17 SCC 448**, in para 17 of the judgment, the Court said :

“...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights.”

16. In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157**, in para 18 of the judgment, the Court said as under:

“What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. 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. 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.”

17. Within what time the petitioner should approach the Court depends upon the facts and circumstances of the case. Reasonable time generally means any time which is not

manifestly unreasonable and which is fairly necessary for approaching the Court. Reasonable time would mean a time required by a prudent litigant to approach the Court in the given facts and circumstances of the case.

18. Analyzing the facts of the instant case in the backdrop of aforesaid legal position, it is absolutely clear that the petitioner has approached this Court at a highly belated stage after about 13 years. The petitioner after waking up from deep slumber, approached this Court, without any iota of explanation for the delay as per his choice, caprice and whim. Thus, it can by no stretch of imagination be stated that the petitioner has approached this Court within a reasonable time and even though nothing has been stated in the writ petition, why the petitioner is coming after 13 years of passing the impugned order dated 08.09.2011, thus this Court does not find any justification to grant relief as sought by the petitioner on the ground of delay and laches. The petition is totally misconceived and is liable to be dismissed.

19. According, **dismissed.**

20. No order as to cost.

Order Date :- 2.9.2024
Arvind

(Shamim Ahmed,J.)