

Serial No. 24.
Regular List.

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

CrIM(791/2021) IN CrIA(AS) 11/2021  
CrIM(792/2021).

UNION TERRITORY THROUGH POLICE STATION GANDERBAL.

...Appellant (s)

Through: Mr. Satinder Singh Kala, AAG with  
Ms. Rahella Khan, Assisting Counsel.

VERSUS

MOHAMMAD YASIN MIR.

Through: Mr. Umar Rashid Wani, Advocate.

...Respondent(s)

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.**

**ORDER**

**13-09-2024**

**CrIM No. 791/2021:**

01. The applicant/appellant has filed the present application seeking Condonation of Delay in filing the appeal against the judgement of acquittal dated 25.09.2018 passed by the learned Sessions Judge, Ganderbal.

02. In the application, it has been submitted that the delay in filing the appeal is neither intentional nor deliberate, because the authorities consumed considerable time in making up a decision as to whether or not the appeal is to be filed against the judgement of acquittal. It has been submitted that the matter was under active consideration of the Administrative Department and, finally, it was decided to file the acquittal appeal, whereafter the matter was referred to the Law Department for opinion/sanction. The Department of Law is stated to have

accorded the sanction for filing of the acquittal appeal vide Order dated 14.11.2019, in favour of Sh. Irfan Andleeb, the then Deputy Advocate General. It has been submitted that the order was never delivered to the concerned Deputy Advocate General and that the same was inadvertently sent to Senior Superintendent of Police, Srinagar, instead of Senior Superintendent of Police, Ganderbal. It has been submitted that it was only on 24.06.2021, when a review meeting was conducted by the Secretary to the Government, Law, Justice and Parliamentary Affairs, that it came to the fore that the sanction in filing the acquittal had been accorded on 14.01.2019, whereafter the documents were submitted by the Public Prosecutor to the learned Government Advocate, who filed the appeal after the Covid-19 pandemic was over.

03. The application has been contested by the respondent by filing his reply thereto. In the reply, the respondent has denied the assertions made by the applicant/appellant. It has been submitted that by the time Covid-19 pandemic had intervened, the prescribed period of limitation had already expired, therefore, the order passed by the Supreme Court in Suo motu Writ Petition Civil No. 03/2020 would not come to the rescue of the applicant/ appellant.

04. I have heard learned counsel for the parties and perused the record.

05. As already indicated, the judgement of the acquittal has been passed on 25.09.2018 and the appeal has been filed by the applicant/appellant on 08.07.2021. Therefore, there is a delay of 927 days in filing the appeal. It is an admitted case of the applicant/ appellant that sanction was accorded by the Law Department for filing of the appeal on 14.01.2019. The justification for not filing the appeal immediately upon the grant of sanction by the Law Department which

has been projected by the applicant/appellant is that the said order was lost in transit and it was, inadvertently, sent to SSP, Srinagar, instead of SSP, Ganderbal and this fact came to the fore during the review meeting held on 24.06.2021.

06. The fact that the officers/officials of the appellant-State lost track of the sanction granted by the Law Department speaks volumes about the negligence and lack of due diligence on the part of the functionaries of the appellant-State. According to their own case, it was only after two and a half years that they could trace out the said sanction order of the Law Department. This shows that the applicant/ appellant-UT was not only negligent in pursuing the remedy of appeal against the judgement of acquittal, but it was also guilty of indifference in dealing with the case. Such kind of negligence and indifferent attitude on part of the officers/officials of the applicant/ appellant-UT cannot be excused. The Supreme Court in the case of “*Chief Post-Master General Vs. Living Media India Ltd.* (2012) 3 SCC 563, has held that the government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. The Court went on to observe that the law shelters everyone under the same light and should not be swirled for the benefit of a few.

07. In the instant case one could understand the delay in filing the appeal upto the date of grant of sanction by the Law Department, but beyond that there is no justification for condoning the delay in filing the appeal which is highly inordinate. Only the delay which is bona-fide and unintentional can be condoned not that every kind of delay has to be condoned just because the party applying for condonation of delay is the State. The applicant/appellant has miserably failed to explain the delay in filing the appeal which is highly inordinate.

08. So far as the contention of the applicant/appellant-UT that due to Covid-19 pandemic, it was not possible for it to file the appeal immediately is concerned, the same is liable to be rejected out rightly for the reason that as per the applicant/appellant's own case, it was not aware about the sanction order until 24.06.2021 and by that time the first wave of the pandemic had already receded. Even otherwise, by the time of Covid-19 pandemic had set in somewhere around March, 2020, the prescribed period of limitation had already expired.

09. In view of what has been discussed hereinabove, the applicant/appellant has been unable to properly explain the delay of 927 days in filing the appeal against the judgement of acquittal. Although the courts generally tend to take a lenient view in the matter of excusing delay in filing the appeals when it comes to the State and its functionaries, having regard to the impersonal nature of the functioning of the State, yet the State does not have a vested right to file the appeal at a belated stage, without properly explaining the reasons for the delay.

10. For the foregoing reasons, the instant application is **dismissed**, resultantly, the accompanying main appeal, bearing CrIa (AS) No. 11/2021, shall also stand **dismissed**. Interim direction(s), if any subsisting as on date, shall stand vacated.

(Sanjay Dhar)  
Judge

**SRINAGAR**  
**13-09-2024**  
*Showkat Khan*