

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

SLA No. 12/2015  
in  
CRAA No. 11/2015  
CONCR No. 12/2015

*Reserved on 06.12.2021  
Pronounced on: 09.12.2021*

**State of J&K**

....Appellant(s)/Petitioner(s)

Through :- Mr. Aseem Sawhney, AAG

**Versus**

**Lalan Yadav**

....Respondent(s)

Through :- Mr. Bhavishya Sudan, Advocate

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**

**JUDGMENT**

1. The order of acquittal of the accused dated 13.06.2014 is sought to be challenged by the appellant-State in accompanied appeal. As the appeal has been filed after the expiry of period of limitation, application on hand has been filed seeking condonation of delay in its filing. The appellant has also filed an application seeking leave of this Court to file the appeal against the acquittal.

2. Before dealing with the application seeking condonation of delay it would be appropriate to examine the impugned judgment to find out as to whether or not any interference is warranted therewith, so that injustice

may not occasion merely because of lapse on the part of the appellant-State in filing the appeal within the prescribed period of limitation.

**3.** The brief case of the prosecution is that while HC Rattan Singh and party were on routine naka/duty, they intercepted accused/respondent herein Lalan Yadav and seized 11 Kg of ganza. After the registration of FIR No. 56/2010, the investigation was handed over to SI Niayat Ali, who conducted the investigation, recorded the statements and performed all the legal formalities and presented the challan before the Court of Principal Sessions Judge, Kathua on 20.03.2010, who transferred the case to the trial court on the same day. Charges were framed against the accused/respondent herein under section 8/20 NDPS Act on 21.04.2010, who pleaded not guilty and claimed to be tried. The prosecution was directed to lead evidence. The prosecution has examined as many as eight out of nine cited witnesses to prove the guilt of the accused/respondent herein. Prosecution evidence was closed vide order dated 20.02.2014, and the case was posted for recording the statement of the accused/respondent herein under section 342 Cr.P.C. on the same day. The statement of the accused/respondent herein was recorded on 23.04.2014, who in his statement denied the occurrence and the case was posted for advancing arguments in terms of section 273 Cr.P.C. Vide order dated 23.05.2014, the trial court did not find the case to be of no evidence asked the accused/respondent herein to produce evidence in defence. But the learned counsel for the accused/respondent herein submitted that he does not want to produce any defence evidence. As such, the file was posted for advancing arguments. During trial the statements of the prosecution

witnesses were recorded and after hearing the learned counsel for the parties, the learned Trial court delivered the judgement on 13.06.2014 whereby the respondent herein /accused has been acquitted of the charges.

4. PW Dev Singh has stated that the accused was nabbed at 10.05 am, however, the other prosecution witnesses have deposed the time of occurrence at approximately 6.30 am. No independent witness has been brought as a witness to prove the prosecution case. Though, Investigating Officer has deposed that no independent witness was willing to join, however, he has failed to disclose names of the independent witnesses who are not willing to join. The resealed packets of the narcotics which has been dispatched to the FSL on 09.03.2010 has not been produced as a part of the challan by the I.O. Consequently, the same has also not been proved. As per the statement of the I.O. the seized material was deposited in malkhana, but neither the extracts of malkhana register are part of the challan nor the then malkhana Incharge is a witness cited in the challan. PW Shamshad Begum deposed that she took the sealed packet to Tehsildar office for resealing, who in turn directed the Naib Tehsildar to reseal the same. In her cross examination she deposed that Incharge Police Post in her presence sealed the ganza packet and then handed over the same to her for resealing. Dr. Pawan Abrol, Asstt. Scientific Officer has proved his FSL report dated 13.03.2010, but in cross examination he admitted that there is no mention of nature of seal impressions in his report and he cannot remember the specimen/impression of each seal. ASI Mohan Lal has been cited as a witness in the challan, but he has not been examined as a witness during the

trial, thereby breaking the link evidence. Therefore, the Trial court came to the conclusion that the prosecution has miserably failed to prove the case and the charges leveled against the accused.

5. I have heard learned counsel appearing for the parties and carefully perused the material on record.

6. So far as the application seeking to condone the delay in filing the Criminal Acquittal Appeal is concerned, a perusal of the file reveals that there is 148 days delay in filing the appeal. The judgment impugned came to be delivered on 13.06.2014. It is revealed that sanction to file the appeal was given on 20.11.2014 and the appeal came to be filed only on 11.02.2015. The applicant has failed to give any cogent reason for this delay, let alone explain day-to-day delay in filing the appeal. Delay in filing appeal after the statutory period of limitation prescribed cannot be condoned as a matter of course. The party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. Merely saying that the delay was on account of procedural aspect, is not sufficient cause to condone the delay. The Hon'ble Supreme Court in *SLP (Civil) Diary No(s).19846/2020* titled as *Union of India Vs. Central Tibetan Schools Admin & Ors.*, decided on 04.02.2021 while dismissing it on account of delay observed as under:-

***“We have repeatedly been counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file***

*appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!*

*The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]....”*

7. For the foregoing reasons, I do not find any merit in the application and as such the application seeking condonation of delay deserves to be rejected and accordingly, the same is **dismissed**. Resultantly, in light of dismissal of condonation of delay application, the application seeking leave to appeal as well as the Criminal Acquittal Appeal shall also stand **dismissed**, being time barred.

(Tashi Rabstan)  
Judge

JAMMU  
09.12.2021  
Pawan Angotra

*Whether the order is reportable? Yes/No*  
*Whether the order is speaking? Yes/No*

