

Criminal Misc. Application NO.	1121 of 2025
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Exhibit	09
Filed on	29/07/2025
Registered on	29/07/2025
Decided on	27/04/2026
Duration	Y 00 M 08 D 29

**IN THE COURT OF 5th ADDITIONA SESSIONS JUDGE, AT
JAMNAGAR.**

Criminal Miscellaneous Application No.	1121 of 2025
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Applicant :-

The Government of Gujarat
Through Public prosecutor,
Jamanager

V E R S U S

Respondents :-

(1) Vishnubhai Sendhabhai Patel

Age : 58,
Reside at sector -B, Plot No. 593/02,
Gandhinagar

(2) Lalitbhai Vashrambhai Chandya

Age : 58,
Reside at Nava Thorala, Sarvoday Sheri No.2,
“Punam”, Rajkot

(3) Arunaben Virjibhai Dafda

Age : 61,
Reside at Vijaynagar-4, Nutannagar society,

Bhuj-Kutch.

Subject:- An application to condone the delay in preferring an appeal.

Appearance:-

Mr.H. D. Mehta, learned APP for applicant.

Mr. S.G. Mehta, Ld. counsel for the respondent no.2

Respondent NO.1 and 3 exparte.

J U D G M E N T

1. The present application has been preferred u/s 5 of the Limitation Act for seeking the condonation of delay of 4 months in preferring the appeal against the impugned judgment dated 04/01/2025 passed by Learned Chief Judicial Magistrate, Jamnagar in C.C. No.4159/2002, whereby the respondents have been acquitted and the appeal is preferred against the judgment of acquittal.

2. Notice have been duly served upon the respondents and therefore, Id. Advocate for the respondent no.2 appeared and none appeared on behalf of the respondent no.1 and 3 and therefore, the matter has proceeded ex-parte against them.

3. I have heard the learned counsels for the applicant and Learned APP for the applicant submitted that the respondents were auitted by Ld. Trial Court and therefore, the government has chosen to prefer an appeal, but the time has consumed in getting necessary permission to file an appeal and therefore, delay of 4 months have occurred. It is prayed to condone the delay.

4. Ld. Advocate for the respondent no.2 argued that the delay of any length can be condoned only if sufficient reason has been shown. It is submitted that the length of delay is not an important factor but the sufficient cause must be shown to explain the delay. It is submitted that the delay cannot be condoned as an act of generosity. It is submitted that in the present case no sufficient cause has been shown and therefore, it is prayed to reject the present application.

5. I have considered the submissions of the learned counsel for the parties and perused the record. Perusal of the record transpires that the impugned order was passed on 04/01/2025. The appeal along with the present application for condonation of delay has been filed on 29/07/2025. The reason is that the certified copy of the judgment got on 6.3.2025 and the time has been consumed in getting the permission to file an appeal. This reason seems sufficient cause for not filing the appeal within time.

6. Ld. Advocate for the respondent no.2 placed reliance on the judgment of Hon'ble Supreme Court reported in 2025JX (SC) 56 between H.Guruswamy Vs. A.Krishnaiah Since deceased by Lrs. In this judgement the condonation of delay of 2200 days has been asked on the ground of mere illness and therefore, it was noticed that the respondents had ample opportunities to act but failed to do so within reasonable time. Further Ld. Advocate placed reliance on the judgment of Hon'ble High Court of Gujarat in R/Civil Application (for condonation of delay) No.5657 of 2025 between Superintending Archaeologist Vs. Hirabhai Laxmanbhai since decd. Through Heir and Ors. In this case it is found that the appeal was preferred at belated stage just to delay the execution proceedings. Ld. Advocate further placed reliance on the judgment of Hon'ble Supreme Court passed in Sp.Leave Petition (c) Diary No.54941 of 2025 between State of Odisha & Ors. Vs. Managing Committee of Namatara Girls High School. In this case the tribunal ordered the government of Odisha to release grant in favour of the respondent and that order was challenged by the government at lately and therefore, the appeal was time barred and it was not accompanied by the certified copy of the order of tribunal and therefore, the appeal was dismissed citing failure to file the certified copy and thereafter, the certified copy of the tribunal's order was obtained and application to recall the earlier order was filed after lapse of 291 days and

therefore, it was observed by Hon'ble High Court that the delay in presenting the appeal is in excess of 11 years. Hon'ble Supreme Court held in this case that there is a point beyond which even the courts cannot help a litigant even if the litigant is government which is itself under the shackles of bureaucratic indifference. Ld. Advocate further placed reliance on the judgment of Hon'ble High Court of Gujarat between Heirs of Decd. Mandabhai Hirabhai Vadhiya Vs. Bachibem wife of Kanabhai Pandit, in this case it is held that when a party fails to act with reasonable diligence, Court will refuse to exercise its discretionary power to condone the delay. I have gone through the above judgments on the issue of condonation of delay, there cannot be any doubt with regard to the above judgements, but in above cases there were gross and inordinate and unexplained delay. But in the case at hand, the delay occurred in getting the certified copy of the judgment and getting the permission to file an appeal, which are sufficient causes for delay.

7. It is settled preposition of law that the delay of any length can be condoned if it is properly explained. It is also settled preposition of law that to condone the delay it is discretionary power of the Court and the Court must use the discretionary power judiciously. Therefore, in my considered view the delay has been explained.

8. At this juncture, it would be profitable to refer the judgment of Hon'ble Supreme Court in the case of ***Collector, Land Acquisition, Anantnag v. Katiji, reported in 1987(2) SCC 107***, wherein the Hon'ble Supreme Court has laid down following guidelines for condoning the delay:

“(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 mala fides. 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.”

9. Thus, having regard to the totality of facts and circumstances, and the law laid down by the Hon’ble Supreme Court in the case of Katiji (supra), the present application deserves to be allowed, and accordingly I pass the following order :

FINAL ORDER

- (1) The present application is hereby allowed and delay 4 months in preferring the appeal against the impugned judgment is condoned.
- (2) The Registry is hereby directed to register the appeal if it is in proper form and manner.
- (3) Copy of this order be placed in appeal which is going to be registered.
- (4) No order as to costs.

This order is pronounced and signed in the open Court on this 27th day of April - 2026 under my hand and seal.

Date: 27/04/2026

Place: Jamnagar.

(Sandeep Manharkumar Christy)
5th Additional Sessions Judge Jamnagar

UIC No. GJ00929