

IN THE COURT OF SH. DHIRENDRA RANA, ASJ-05
PATIALA HOUSE COURTS, NEW DELHI DISTRICT,
NEW DELHI

CNR No. DLND01-001734-2026

Criminal Appeal No. 71/2026

IN THE MATTER OF :

Rajesh Kumar
S/o Late Nageshwar Prasad Singh
R/o H. No. B-401, DDA Flats,
Bindapur, Uttam Nagar,
New Delhi.

..... Appellant

Vs.

1. State (Govt. NCT of Delhi)
2. Premvir Singh
S/o Sh. Jaswant Singh
R/o H. No. 10, Block-19, Ground Floor,
Right Side, Spring Field Colony,
Faridabad, Haryana.

..... Respondents

Date of institution	:	19.02.2026
Date on which order reserved	:	Not reserved
Date of order	:	10.08.2026
Decision	:	Dismissed

ORDER

1. Vide this order, I shall dispose off an application under section 5 of Limitation Act filed on behalf of petitioner for condonation of delay. I would be referring the parties with their nomenclature as before Ld. Trial Court for the sake of clarity.

2. Brief facts of the case are that;

2.1 The complainant is the friend of accused. Both the parties were involved in sale and purchase of a property transaction amounting to Rs. 69,00,000/-. Complainant had paid an amount of Rs. 14,00,000/- to the accused as an advance payment for purchasing the property. However, the agreement was mutually cancelled on 30.06.2017. It was agreed between the parties that accused would return the advance payment of Rs.14,00,000/- to the complainant and said payment would be made by accused in two installments through cheque. In discharge of the legal liability, accused had issued two cheques to the complainant i.e., cheque No. 870932 dated 30.12.2017 for Rs.6,00,000/- and cheque No. 870931 dated 31.06.2018 for Rs. 7,00,000/- both drawn on Punjab National Bank. When cheque bearing No. 870932 was presented for encashment, same got dishonoured with remarks "Funds Insufficient" vide returning memo dated 09.03.2018. Thereafter, a legal notice was served upon accused but the payment was not done by the accused. Hence, the complaint was filed by the complainant before the Ld. Trial Court.

3. The Ld. Trial Court after conclusion of the trial, passed the impugned judgment 11.06.2025 whereby accused was acquitted.

4. Feeling aggrieved by the impugned order, present appeal was filed on the ground that Ld. Trial Court erred in law as well as on the facts coming to the conclusion to acquit the accused from offence u/sec 138 NI Act. The impugned judgment and order is arbitrary and patently bad in law and even contrary to the facts, deposition and the evidence available on record. Ld. Trial Court committed an error in relying upon the non appearance of the complainant as it is entirely the fault on the part of previous counsel of the complainant, who had not informed the date of hearing to the complainant due to which complainant failed to appear before Ld. Trial Court for his cross examination. Ld. Trial Court committed a grave error as Ld. Trial Court had allowed the application under section 145(2) NI Act of the accused and recorded statement of accused u/sec 313 CrPC but has closed the right of complainant to lead his defence/cross examine himself just for his non appearance due to the sole negligence on the part of his previous counsel. Ld. Trial Court had given opportunity to the accused to lead his defence and not to the complainant, who himself is the victim. As per natural justice, complainant should have also given opportunity to lead his defence before passing of final order but Ld. Trial Court did not give

opportunity to the complainant to examine himself and to lead his defence and passed the impugned judgment and acquit the accused.

5. The impugned order was passed on 11.06.2025 whereas the present appeal was filed on 19.02.2026. It is submitted on behalf of appellant that inadvertently criminal revision petition i.e., Criminal Revision No. 435/2025 title as “Rajesh Kumar Vs. Pemvir Singh” was filed vide order dated 10.12.2025, same was withdrawn as criminal appeal was to be filed instead of criminal revision. It is further submitted that there is admitted delay of 180 days in filing the present appeal. An application under section 5 of Limitation Act has been preferred seeking condonation of delay in filing the appeal.

6. Notice to the application under section 5 of Limitation Act was issued to respondent/accused and Ld. Counsel for accused has opposed the application by filing a detailed reply.

7. In *N. Balakrishanan Vs. M. Krishnamurthy (1998) 7 SCC 123*, it has been held that condonation of delay is the discretion of the court and such discretion is to be exercised if the delay is within certain limits. The length of delay is not a matter but acceptability of the explanation is the only criterion. If the explanation does not smack of malafides or it is not put forth for dilatory strategy the court must show utmost consideration to the suitor.

8. In *M. K Prasad Vs. P. Arumugam AIR 2001 SC 2497* it has been held that while construing section 5 of the Limitation Act, the court has to keep in mind that discretion given in the section has to be exercised to advance substantial justice. The court has a discretion either to condone the delay or to refuse it.

9. In case titled as *Collector Land Acquisition Vs. Mst. Katiji and Ors. AIR 1987 1353*, it has been held that when substantial justice and technical considered 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 an non deliberate delay.

10. The issue was under consideration before Hon'ble Supreme Court of India recently in case titled as *Shivamma (Dead) by LRS Vs Karnataka Housing Board & Ors, Civil Appeal No. 11794/2025, decided on 12.09.2025* wherein Hon'ble Supreme Court of India observed about the concept of sufficient cause and condonation of delay in detail. While interpreting section 5, it was held as under:

“40. As such, under Section 5 of the Limitation Act, for the purpose of seeking condonation of delay in filing of an appeal or application, as the case may be, beyond the stipulated period of limitation, the delay in the filing has to be explained by demonstrating the existence of a “sufficient cause” that resulted in such delay for both the prescribed period of limitation as-well as

the period after the expiry of limitation, up to actual date of filing of such appeal or application, as the case may be, or to put it simply, explanation has to be given for the entire duration from the date when the clock of limitation began to tick, up until the date of actual filing, for seeking condonation of delay by recourse to Section 5 of the Limitation Act.”

Hon’ble Supreme Court of India further held as under:

“258. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, it cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.”

11. It has been clearly observed that the Court need not to go into merits of the case prior to examining the bona fides of the person seeking condonation of delay. The merits of this case would come into play only if the Court is of the view that a sufficient cause has been given resulting in delay of filing the petition or application. Applying the ratio laid down by Hon’ble Supreme Court of India in **Shivamma’s case** to the present petition, it is being pleaded on behalf

of appellant that appeal could not be filed as after receipt of certified copy, he engaged a counsel.

12. Impugned order was passed on 11.06.2025, initially revision petition was filed as complainant was not aware that revision petition was not maintainable against the said order and appeal has to be filed but he was fully aware about the filing of appeal on 10.12.2025 when the revision petition was withdrawn by him. There is no justification given by the appellant for the delay in the period from 10.12.2025 till date of filing of present appeal. Moreover, present appeal has been filed against acquittal of the accused which was based upon the absence of complainant which deprived the accused to cross examine him. When the complainant did not appear before the court for the purpose of cross examination then accused was not allowed to put up the probable defence to rebut the presumption in favour of the complainant. The conduct of the complainant before this court in filing the appeal at a belated stage and without any sufficient cause for condonation of delay, has to be seen in the light of his conduct before Ld. Trial Court. The judgment passed by Ld. Trial Court is merely based upon the absence of the complainant and it is a matter of record that he never appeared before the Court for his cross examination. Appellant had failed to put forth a sufficient reason causing delay in filing the appeal. So, I do not find any sufficient cause pleaded on behalf of appellant in support of

application seeking condonation of delay. Hence, no ground is made out to condone the delay in filing the appeal and application under section 5 of Limitation Act is dismissed accordingly.

13. Therefore, I do find merit in the submissions of Ld. Counsel for accused that the present appeal is time barred.

14. As held by Hon'ble Supreme Court of India in **Shivamma's case**, this Court need not to touch upon the merits of this case if appellant has failed to put up a good case for condonation of delay.

15. The appeal stands dismissed being time barred. Any other application, if any, also stands disposed off accordingly.

16. Copy of the order be sent to Ld. trial Court along with TCR.

(Dhirendra Rana)
ASJ-05/PHC/New Delhi
10.08.2026