

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 01st September, 2010
Date of Order: 8th October, 2010

+Crl. M.C. No. 1343/2007 & Crl. M.A. No. 4682/2007

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08.10.2010

RELIANCE INDUSTRIES LTD.

.....Petitioner

Through: Mr Dinesh Mathur & Mr. Amit Desai, Senior Advocates with
Mr. R. Sasiprabhu, Mr. Anand and Mr. R. Chandrachud, Advocates.

Versus

C.B.I.

... Respondents

Through: Mr S.k. Saxena, Advocate for CBI

JUSTICE SHIV NARAYAN DHINGRA

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. By this Criminal Miscellaneous (Main) Petition under Section 482 of Code of Criminal Procedure (Cr. P.C.) the petitioner has assailed an order dated 23rd December, 2006 passed by learned Additional Sessions Judge (ASJ) dismissing the Revision filed by the petitioner against the order of learned Metropolitan Magistrate (MM) whereby delay of 142 days in filing the complaint by the respondent under Official Secrets Act was condoned.

2. A search was conducted of the office premise of an official of the petitioner on 28th October, 1998 and as a result of this search some secret documents were recovered from the table drawer of Shri V. Balasubramanian, the Group President of Reliance Industries Limited (the Petitioner) and a criminal case bearing FIR No. 496 of 1998 was registered by the Delhi Police in this respect on 6th November, 1998 at

Police Station Parliament Street, New Delhi, under the provisions of Official Secrets Act, 1923 considering it a case of sensitive nature later its investigation was handed over to the Central Bureau of Investigation (CBI). The CBI registered the case on 13th November, 1998 being R.C. No. 9 (S)/98-SIU-1 and completed the investigation

3. Deputy Superintendent of CBI on being authorized by U.O. I. filed a Criminal Complaint Case No. 13/2002 on 19th March, 2002 before the Court of learned Chief Metropolitan Magistrate (CMM). Since there was a delay in filing the complaint, an application for condonation of delay was filed by the respondent (CBI) on 4th April, 2002. In the application it was contended that CBI had completed the investigation of the case by December, 2000, however, while evaluating the evidence, the CBI felt that accused V. Balasubramanian would not be interested in receiving these secret documents unless he was acting as per the will and mind of the corporate entity with which he was associated. The CBI, therefore, sought legal opinion from the Attorney General, if on the basis of the evidence; the corporate entity could also be made an accused. The Attorney General sought certain clarifications from the CBI which were provided and after holding discussions with Investigating Officer and Joint Director, CBI, Attorney General desired certain inputs from Solicitor General of India. Since Solicitor General of India was not there, the matter was referred to Additional Solicitor General and ultimately a joint opinion of the Attorney General and the Additional Solicitor General was taken by the CBI on 1st March, 2002 and on reference from CBI, Ministry of Home Affairs granted authorization for filing complaint against the accused persons on 16th March, 2002. Thus, it was contended by the CBI that there was no delay either in conducting investigation or in filing the application for condonation of delay. The delay accrued due to circumstances as stated and the CBI sought condonation of delay of about 142 days.

4. The CMM vide his order dated 5th April, 2002 condoned the delay. The revision against the order of CMM was dismissed by learned ASJ observing that the CBI had appropriately explained the delay in filing the complaint and there was no negligence, delay or inaction on the part of CBI or the respondent in pursuing the prosecution of the case. He, therefore, dismissed the revision petition.

5. The order of learned CMM and the learned ASJ are assailed on the ground that the orders were patently illegal. It is submitted that it was statutory responsibility of the prosecuting agency to have filed complaint within a period of three years and since the complaint was not filed within the period of three years a valuable right accrued to the petitioner. It is submitted that the complaint could have been filed without the opinion of the Attorney General or Solicitor General and obtaining of such opinion cannot be considered as a valid ground for condonation of delay in filing the complaint. There was, thus, no due diligence on the part of the CBI and the delay was wrongly condoned. It is stated that in revision the learned ASJ also did not apply judicial mind and erred in relying upon the decision of Madhya Pradesh High Court in *Krishna Sanghai Vs. State of Madhya Pradesh*, 1977 CrL. L.J. 90 regarding the scope of exercise of discretion under Section 473 of Cr. P.C.. It was also submitted that in view of the decision of Supreme Court in *State of Himachal Pradesh Vs. Tara Dutt*, (2000) 1 SCC 230 a twin test needs to be fulfilled for condonation of delay, one that the delay has been properly explained and the second that it was necessary to condone the delay in the interest of justice. It is submitted that the order of learned CMM as well as learned ASJ was silent as to how it was necessary to condone the delay in the interest of justice and therefore the orders were bad in law. A prayer is made that the orders be set aside and the Criminal Complaint being barred by limitation, be quashed.

6. Section 473 of Cr. P.C. reads as under:

“473. Extension of period of limitation in certain cases.

Notwithstanding any thing contained in the foregoing provisions of this Chapter, any court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

7. Section 473 Cr. P.C. was interpreted by the Supreme Court in *Smt. Venkata Reddy and Ors. Vs. Vanka Venkata Reddy and Ors. (1993) 2 Crimes 275*. The Supreme Court had considered the scope of Section 473 Cr. P.C. and observed as Under:

5. Earlier there was no period of limitation for launching a prosecution against the accused. But delay initiating the action for prosecution was always considered to be a relevant factor while judging the truth of the prosecution story. But, then a Court could not throw out of complaint or a police report solely on the ground of delay. The code introduced a separate chapter prescribing limitations for taking cognizance of certain offences. It was felt that as time passes the testimony of witnesses become weaker and weaker because of lapse of memory and the deterrent effect of punishment is impaired, if prosecution was not launched and punishment was not inflicted before the offence had been wiped off from the memory of persons concerned. With the aforesaid object in view Section 468 of the Code prescribed six months, one year and three years limitation respectively for offences punishable with fine, punishable with imprisonment for a term not exceeding one year and punishable with imprisonment for a term exceeding one year but not exceeding three years. The framers of the Code were quite conscious of the fact that in respect of criminal offences, provisions regarding limitation cannot be prescribed at par with the provisions in

respect of civil disputes. So far cause of action accruing in connection with civil dispute is concerned, under Section 3 of the Limitation Act, it has been specifically said that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 5 of that Act enables any Court to entertain any appeal or application after the prescribed period, if the appellant or the applicant satisfies the Court that he had "sufficient cause for not preferring the appeal or making the application within such" period". So far Section 473 of the Code is concerned, the scope of that Section is different. Section 473 of the Code provides:-

"Extension of period of limitation in certain cases.- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice."

In view of Section 437 a Court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the Court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non obstante clause which means that said section has an overriding effect on Section 468, if the Court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.(emphasis added)

6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of

the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the Court that there was sufficient cause for condonation of delay under Section 5 of the Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the Court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the Court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the Court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim : vigilantibus, et non- dormientibus, jura subtenunt (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women.(emphasis added)

7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was though

proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of State of Punjab v. Sarwan Singh 1981CriLJ722 . But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a Court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, Courts while considering the question of limitation for an offence under Section 498A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interest of justice".

In the case of Bhagirath Kanoria v. State of M.P. [1985]1SCR626 , this Court even after having held that non-payment of the employer's contribution to the Provident Fund before the due date, was a continuing offence, and such the period of limitation prescribed by Section 468 was not applicable, still referred to Section 473 of the Code. In respect of Section 473 it was said:

"That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of

limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in Section 473 of the Code.”

8. In view of the clear interpretation of statutory provision of Section 473 Cr. P.C. and in view of the detailed discussion of extent and scope of Section 473 Cr. P.C. by the Supreme Court in *Venkata Reddy* case (supra), I consider that word “OR” used in Section 473 Cr. P.C. cannot be read as “and”. In fact in *Tara Dutt* case the Supreme Court had not stated that word “OR” has to be read as a conjunctive “and”. The Supreme Court considered the provision of Section 473 Cr. P.C. as if it contained word “and” & not “OR”. Para 7 of the judgment shows that the Supreme Court read Section 473 Cr. P.C. as under:

*“Section 473 confers power on the court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained **AND** that it is necessary so to do in the interest of justice.”*

9. In view of this reading of word ‘OR as ‘AND’, the observation were made by the Supreme Court that a twin test has to be satisfied. In fact the Statute does not use word “and” uses word “OR” and it is settled law that even a Supreme Court judgment is not to be read as Statute and it is only statutory provision which is to

prevail and relied upon. I, therefore, consider that it is not the twin state which is to be satisfied at the time of considering application for condonation of delay but it is a test as laid down by the Supreme Court in the case of *Venkata Reddy (supra)* which is to be satisfied.

10. In the present case CBI has given good and valid reasons why the complaint could not be filed within the time despite the fact that the investigation had been completed much before the period of limitation. I consider that if an investigating agency seeks opinion whether a corporation can be made accused on the basis of evidence collected during investigation, it cannot be said that the investigating agency acted without due diligence. No doubt an Investigating Officer of CBI is supposed to know the law but the same is the case with judges and every judge is supposed to know the law, still decisions of MM are not accepted by the parties and are taken up in appeal or revision right up to the Supreme Court. When not satisfied with the decision of a Court the parties approach higher courts, although decisions of all courts that of MM, ASJ and High Court are given in accordance with law, an Investigating Officer, though is supposed to know the law but if he considers that he should take opinion of the top law officer of the Government so that he does not go wrong on some legal issue, I do not consider that it is unwarranted or unnecessary. I, therefore, find that the explanation given by the CBI for delay in filing the complaint was rightly accepted by the learned CMM and rightly upheld by the learned ASJ.

11. The petitioner has also relied on *Abdul Rehman Antulay etc. etc. Vs. R.S. Nayak and another etc. etc, AIR 1992 SC 1701* case to press the point that speedy trial was a guarantee emanating from Article 21 of the Constitution of India and indiscriminate condonation of delay on such flimsy ground takes away this guarantee. I consider that *Antulay* case is an example as to why the trials in India can never be speedier at least in cases of those persons who have power with them or

money power with them. *Antulay* case is a glaring example of malfunctioning of the judicial system of this country that despite there being documentary proof that with every ton of cement license the licensee had to pay a fixed amount of donation in a Trust created by the accused, accused got scot free. It happened when there was documentary proof of donations accepted by way of drafts and cheques, nothing happened to the accused and this happened because judicial system was exploited to its hilt to see that the case does not proceed and High Court and Supreme Court were made to give ten decisions in *Antulay* case – (i) (1986) 2 SCC 716, (ii) AIR 1981 Bombay 422, (iii) (1982) 2 SCC 463, (iv) 1982 ILR 2098, (v) (1984) 2 SCC 183, (vi) 1983 ILR Bombay 2188, (vii) (1984) 2 SCC 500, (viii) 1986 Suppl. SCC 510, (ix) (1988) 2 SCC 602 and (x) AIR 1992 SC 1701. The complainant R.S. Nayak who had filed the complaint in 1981 had given up his effort to see that the accused is brought to book. So long as courts in India are generous in entertaining the petitions against interim and interlocutory orders and in granting stays but have no time to dispose them of with same speed at which they are admitted and so long we succumb to the culture of adjournments as prevalent, the speedier trial of criminal cases in case of powerful persons and in case of persons with money, is a distant dream.

12. The present petition filed by the petitioner is devoid of merits and is hereby dismissed.

OCTOBER 08, 2010
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SHIV NARAYAN DHINGRA, J.