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

+ CRL.M.C. 3858/2011

CHANDER MOHAN DUTTA & ANR Petitioner
Through Mr. Jugal Wadhwa, Adv.

versus

STATE Respondent
Through None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
23.11.2011

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Crl.M.A. 18254/2011

Exemption allowed subject to just exceptions.

CRL.M.C. 3858/2011 & Crl.M.A. 18253/2011 (stay)

1. The complainant Dr. K.D. Gandhi filed a complaint against the Petitioners to the DCP Vigilance Cell Asaf Ali Road on 11th June, 2004. Pursuant to an enquiry conducted FIR No. 49/05 was registered on 20th January, 2005 under Section 341/504/506/509/427 IPC at PS Rajouri Garden. After investigation charge-sheet was filed in the said case on 2nd September, 2008 and cognizance thereto taken on the same date. On 19th July, 2011 a formal application for condonation of delay was filed by the

Crl.M.C. 3858/2011

Page 1 of 8

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2

concerned Investigating Officer and vide the impugned order dated 23rd July, 2011 the delay was condoned and the Petitioners were directed to be summoned. It is this order dated 23rd July, 2011 condoning the delay of 1 year and 3 months in filing the charge sheet and taking cognizance thereon and the consequent order thereupon summoning the Petitioners which is impugned in the present petition.

2. Learned counsel for the Petitioner strenuously contends that once there is a delay in filing the charge-sheet the accused gets an indefeasible right against the prosecution and the same cannot be taken away lightly. The Hon'ble Supreme Court and this Court have repeatedly held that the judicial discretion to condone the delay should be on the basis of twin requirements of sufficient reasons being explained in the application for condonation of delay and the interest of justice. It is stated that time taken for investigation is no ground to condone the delay. Initially no separate application was filed and only one line was mentioned in the charge-sheet itself that since the investigation took time the delay be condoned. Belatedly after three years an application for condonation of delay was filed which was a cryptic application and the only ground taken therein was that the investigation was initially conducted by the local Police which was

3

subsequently transferred to the DIU West District and in view of the subsequent transfer of the Investigating Officers the charge-sheet could not be filed before the Hon'ble Court within the period of limitation. Reliance is placed on *Ramesh Chandra Sinha and Ors. Vs. State of Bihar and Ors.* 2003 (2) C.C. Cases (SC) 235; *Zandu Pharmacheutical Works Ltd. & Ors. Vs. Sharaful Haque & Ors.* 2004 (3) C.C. Cases (SC) 365; *State of Punjab Vs. Sarwan Singh* AIR 1981 SC 1054; *R.P. Sharma & Ors. Vs. State* 42(1990) DLT 241; *Sanjay Gupta & Ors. Vs. State and Anr.* 2003 (1) C.C. Cases (HC) 46; *B.K. Roy Choudhary Vs. State (CBI)* 1997 (2) C.C. Cases 252 (HC); *Romy Khanna Vs. State (Govt. of NCT of Delhi) & Ors.* 182 (2011) DLT 221; *M/s. Nestle India Ltd. & Ors. Vs. State & Anr.* 1999 (2) C.C. Cases HC 421; *Lokesh Tokas & Anr. Vs. State* 2002 (2) C.C. Cases (HC) 14.

3. I have heard learned counsel for the Petitioner. Briefly the facts of the case have been adumbrated in the preceding paragraphs. The issues before this Court is whether an application is essential for seeking condonation of delay and whether time being consumed in the investigation due to the change of Investigating agencies and Investigating Officer should inure to the benefit of the accused thereby scuttling and thwarting criminal prosecution. In the present case the charge-sheet has been filed for offences

4

under Section 341/506/509/427/504 IPC and thus the period of limitation as per Section 468 Cr.P.C. was three years for taking cognizance as the maximum punishment provided for the offences was two years. Assuming the Petitioner's contention to be correct that the time period has to be reckoned from the date of incident in terms of Section 469 IPC and the delay in filing the charge-sheet was for a period of one year and three months, can it be said that the Learned Trial Court was unjustified in condoning the delay and passing the impugned order.

4. The Learned Trial Court observed that there can be no dispute to the proposition of the learned counsel for the defence that the two conditions mentioned in Section 473 Cr.P.C. were to be read conjunctively and not disjunctively. It came to the conclusion that in the instant case a Doctor was constantly harassed by two senior level Police Officers and they made the life of the complainant, his wife, daughter and his old mother a hell. Though a complaint was filed on 11th June, 2004, however, the FIR itself was registered after a considerable delay of almost 7 months and thereafter the investigation continued for more than three years, though the facts did not involve any complex or intricate scientific question or factual quandary, according to the Learned Trial Court. Without commenting upon the

5

indolence or lackadaisical attitude of the Investigating agency the Court was of the opinion that the interest of justice could not be jettisoned at the very threshold on the technicalities of the limitation.

5. The Hon'ble Supreme Court in *Vanka Radhamanohari Vs. VankaVenkata Reddy & Ors.* (1993) 3 SCC 4 held that while condoning the delay and considering the applicability of Section 473 Cr.P.C., the Court is required to consider the explanation of delay and the interest of justice. It was held that in view of Section 473 Cr.P.C. the 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 the absence of proper explanation if the Court is satisfied that it is necessary so to do in the interest of justice. By virtue of non-obstante clause in Section 473 Cr.P.C. the said section has an overriding affect on Section 468 Cr.P.C. While examining the question the Court has to take note of the nature of offence, the class to which the victim belongs including the background of the victim. It was held that there was a basic difference between Section 5 of the Limitation Act and Section 473 Cr.P.C. For exercise of power under Section 5 of the Limitation Act, the onus is on appellant or the applicant to satisfy the Court that there was sufficient cause

6

for condonation of delay, whereas Section 473 Cr.P.C. 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.

6. In *Ramesh Chander Sinha* (supra) the Hon'ble Supreme Court held that the reason for condoning the delay by the Magistrate was that from 11th November, 1994 till 5th October, 1999 further proceedings in the Court of Learned Magistrate should be construed as stayed in view of the orders passed in Criminal Miscellaneous No. 16672/1994 whereas in the light of the order passed by the High Court on 6th February, 1995 there was no scope to contend that the proceedings before the Magistrate was stayed, as by the order dated 6th February, 1995, the order dated 11th November, 1994 was modified in effect to vacating the earlier order staying further proceedings. Further in *Zandu Pharmacheutical Works Ltd.* (supra) the Hon'ble Supreme Court held that the complainant in the said case has not come to the Court with clean hands and there was no explanation whatsoever for the inaction between the 1995 and 2009 and that the communication dated 5th December, 2001 was in response to the letter of the complainant dated 24th November, 2001. Thus, according to their Lordships the factual position clearly showed that complaint was nothing but a sheer abuse of the process of law and the

7

said was a case where the power under Section 482 should have been exercised. In *State of Punjab Vs. Sarwan Singh* (supra) their Lordships held that the bar of limitation on the prosecution was clearly to prevent the parties from filing cases after a long time as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of offences.

7. In the present case the complaint by the complainant was filed to the DCP Vigilance on 11th June, 2004. However, the Police took almost 7 months in registering the FIR and thereafter it is apparent since Police Officers were involved investigating agencies had to be changed and the case file was transferred to different I.O.s, thus, causing delay. Thus, in view of the law laid down by the Hon'ble Supreme Court in *Vanka Radhamanohari* (supra) I find that this was a fit case for condoning the delay and no illegality has been committed by the Learned Trial Court while passing the impugned order.

8. As regards the issue whether a formal application would be required for condoning the delay, it may be noted that in *Vanka Radhamanohari* (supra) their Lordships held that there was a distinction between Section 5 of the Limitation Act and Section 473 Cr.P.C. Under Section 5 of the

8

Limitation Act, the appellant/applicant has to show sufficient cause for condonation of delay whereas under Section 473 Cr.P.C. the duty is enjoined upon the Court to examine that besides the reasons for condonation of delay whether the interest of justice demands that the delay should be condoned. Thus, to my mind in the peculiar facts of the case where every effort is being made to delay the prosecution and help the accused, the interest of justice cannot be thwarted on account of the inaction of the Police in filing an application for condonation of delay belatedly.

9. Petition and application are dismissed.


MUKTA GUPTA, J

NOVEMBER 23, 2011
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