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

+ CRL.L.P. 157/2014

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Lovkesh Sawhney, APP for the State.

versus

BANTI & OTHERS

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

ORDER

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21.02.2014

CRL.MA.3063/2014 (delay) in CRL.L.P. 157/2014

1. This is an application for condonation of delay of 1266 days in filing of the leave to appeal against the judgment and order on sentence dated 02.06.2010 and 05.06.2010, respectively. The FIR in question was registered in the year 2005 under Section 307 read with Section 34 of the Indian Penal Code, 1860. The learned counsel for the applicant/State has submitted that the delay in the present case was occasioned due to change in nominated counsel and as the original leave to appeal paper book was misplaced. The learned counsel for the Applicant/State has relied upon *State (NCT of Delhi) v. Ahmed Jaan, JT 2008 (10) SC 179* and submits that the delay should be condoned in the present matter.
2. As per the averments made in the application, certified copy of the impugned judgment/order was obtained on 16.07.2010 and was marked to the standing counsel in January, 2011. The file was then misplaced by

the nominated counsel and could be traced by him only in May, 2011. Thereupon, petition was drafted on 23.05.2011 and was received back on 02.06.2011 and on the same day the leave to appeal petition was filed. Objections were raised and the application for leave to appeal was returned. In the meanwhile, there was a change in the nominated counsel/Additional Public Prosecutor and only on 05.02.2014 the appeal was remarked and the same was refilled on 07.02.2014.

3. We have considered the said explanation but do not think that it is a fit case to condone the substantial and long delay. The delay in the present case is more than three and half years, *i.e.* 1266 days. Even at the time of initial filing there was a considerable delay and then when the leave to appeal was returned under objections, no action was taken to verify and ascertain whether the leave to appeal had been refiled and the objections were removed. The only reason given in the application is that there was inaction and failure to re-file the leave to appeal which was returned under the office objections due to change in counsel, as the term of the earlier counsel had come to an end. This cannot and does not constitute sufficient cause or good reason under Section 5 of the Limitation Act to explain the delay between June, 2011 to February, 2014. The applicant/State is required to act with promptitude and their actions should reflect good governance and latitude cannot be given for failure to check and verify status of the case for three years. This is a case of negligence and such conduct and approach should be checked. Once the file was marked to the standing counsel for filing of the leave to appeal, the progress and status of the case should have been verified and ascertained. Proper steps and mechanism should be in place to ensure that lapses and defaults of this nature do not take place. Statute has fixed time limits/schedules which have to be adhered to. Some indulgence is

shown and may be desirable as no unscrupulous party should be allowed to take advantage, but when the said possibility is ruled out, then delays of over three years cannot be treated at par and like smaller delays. In fact, in several cases, delays have been condoned by this Bench.

4. Reliance placed by the learned counsel for the applicant/State on the decision of the Supreme Court in the case of *Ahmed Jaan* (supra) does not help. The expression '*sufficient cause*' it has been observed and held, has to be given a liberal construction and the State cannot be put on the same footing as a private individual. In the case of *Ahmed Jaan* (supra), it is noticeable Sections 121, 121-A, 122, 124-A and 120-B of the Indian Penal Code had been invoked and keeping in view the facts of the said case the Supreme Court had condoned the delay. Factors which are peculiar to and characteristic of the functioning of the governmental condition should be taken into cognizance and pragmatic justice-oriented approach should be adopted. Facts of each case have to be examined to decide whether or not to condone delay and sufficient cause is made out. In the said decision, the government was asked to constitute the legal cells to examine the cases and ensure that the appeals or appellate proceedings were initiated and filed with promptitude and were pursued by the officer responsible. Further, action should be taken where there have been individual lapses and personal responsibility should be fixed.
5. Decision in *Ahmed Jaan*(supra) was pronounced in the year 2008 and it was expected that the State would take appropriate notice of the decision and steps in future, so that such defaults do not re-occur. Recently, in **State of Tamil Nadu v. Suresh Rajan** (Criminal Appeal No. 22-33 of 2014) decided on 6th January, 2014 it has been observed:

“ Mr. Soli J. Sorabjee, learned Senior Counsel appearing for the respondents, however, submits that mere change of Government would not be sufficient to condone the

inordinate delay. He submits that with the change of the Government, many issues which have attained finality would be reopened after long delay, which should not be allowed. According to him, condonation of huge delay on the ground that the successor Government, which belongs to a different political party, had taken the decision to file the special leave petitions would be setting a very dangerous precedent and it would lead to miscarriage of justice. He emphasizes that there is a life span for every legal remedy and condonation of delay is an exception. Reliance has been placed on a decision of this Court in the case of *Postmaster General v. Living Media India Ltd.*, (2012) 3 SCC 563, and our attention has been drawn to Paragraph 29 of the judgment, which reads as follows:

“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

Mr.Sorabjee further submits that the Limitation Act does not provide for different period of limitation for the Government in resorting to the remedy provided under the law and the case in hand being not a case of fraud or collusion by its officers or agents, the huge delay is not fit to be condoned. Reliance has also been placed on a decision of this Court in the case of *PundlikJalamPatil v. Executive Engineer, Jalgaon Medium Project*, (2008) 17 SCC 448 and reference has been made to Paragraph 31 of the judgment, which reads as follows:

“31. It is true that when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. The

Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings.”

The contentions put forth by Mr.Sorabjee are weighty, deserving thoughtful consideration and at one point of time we were inclined to reject the applications filed for condonation of delay and dismiss the special leave petitions. However, on a second thought we find that the validity of the order impugned in these special leave petitions has to be gone into in criminal appeals arising out of Special Leave Petitions (Criminal) Nos. 3810-3811 of 2012 and in the face of it, it shall be unwise to dismiss these special leave petitions on the ground of limitation. It is worth mentioning here that the order impugned in the criminal appeals arising out of Special Leave Petition (Criminal) Nos. 3810-3811 of 2012, *State of Tamil Nadu by Ins. of Police, Vigilance and Anti Corruption v. N. Suresh Rajan*, has been mainly rendered, relying on the decision in *State by Deputy Superintendent of Police, Vigilance and Anti Corruption Cuddalore Detachment v. K. Ponmudi* (2007-1 MLJ-CRL.-100), which is impugned in the present special leave petitions. In fact, by order dated 3rd of January, 2013, these petitions were directed to be heard along with the aforesaid special leave petitions. In such circumstances, we condone the delay in filing and refiling the special leave petitions.”

In the said case for peculiar facts, as noticed delay was condoned.

6. In the facts of the present case, we are not inclined to condone the long delay of 1266 days as sufficient cause has not been shown.

7. In view of the aforesaid position, we do not see any reason to issue notice on the application for condonation of delay and the same is accordingly dismissed. Consequently, the leave to appeal also stands dismissed.

SANJIV KHANNA, J.

G.P. MITTAL, J.

FEBRUARY 21, 2014

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