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

+ **CRL.M.C. 3844/2015 & CrI.M.A. Nos.13675-13676/2015**

Date of Decision: September 28th, 2015

NEERJA BHARGAVA

..... Petitioner

Through

Mr.Rajesh Kumar, Adv. with
Mr.Gaurav Kumar Singh, Adv.,
Mr.Rakesh Chaurasiya, Adv.

versus

STATE OF NCT DELHI & ANR

..... Respondents

Through

Mr.Arun K. Sharma, APP for the
State.
SI Pardeep, PS Subhash Palace.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J

1. The present petition has been filed by the petitioner under Section 482, Code of Criminal Procedure, 1908 ("Cr.P.C.") for quashing of the orders dated 12th September, 1996 and 07th February, 2009 passed in relation to the FIR No. 442 of 1993 under Sections 452,506 r/w Section 34, Indian Penal Code, 1860 of P.S. Saraswati Vihar, Delhi and for quashing the criminal proceedings being continued by the Trial Court pursuant to the framing of charges against the petitioner vide order dated 07th February, 2009.

2. Facts in brief of the present case are that the petitioner namely, Neerja Bhargava, who is fully disabled, accompanied by her minor son, visited India in the month of August, 1993 for treatment. The respondent No. 2, namely, Ms. Indira Kumari i.e. sister-in-law of the petitioner lodged a complaint dated 28.08.1993 at P.S. Saraswati Vihar, Delhi against the petitioner, petitioner's sister-Dr. Charu Smita Gupta, petitioner's father-Sh. Om Prakash and petitioner's brother-Jeevash Sharma alleging that the petitioner demanded Rs. 20 Lakhs from the complainant- respondent no. 2 and threatened to kill her. On the basis of the said complaint, FIR No. 442/1993 was registered. The I.O. of the said case filed a closure report under Section 173 Cr.P.C. on 07th December, 1993 before the Learned Metropolitan Magistrate, following which the learned Metropolitan Magistrate was pleased to discharge the accused persons. The respondent No. 2 preferred a criminal revision against the order dated 07.12.1993 before the learned Additional Sessions Judge who was pleased to set aside the said order vide order dated 12th September, 1996 and remanded back the matter to the Trial Court for trial of all the accused persons. On 21.02.1999, Sh. Om Prakash, father of the petitioner (one of the accused) expired. Dr. Charu Smita Gupta and Sh. Jeevash Sharma preferred a criminal revision bearing No.344/1997 before this Court against the order dated 12.09.1996. This Court by order dated 23rd August, 1999 set aside the order dated 12th September, 1996 against them.

On 05.02.2002, this Court was pleased to dismiss as withdrawn the CrI.M.(M) No.4278/2001 preferred by the petitioner against the trial being conducted against her. The Trial Court framed charges against the petitioner under Sections 506 and 452 read with Section 34 IPC on 7th February, 2009. This Court by order dated 25th March, 2010 was pleased to dismiss the CrI.M.C. No.680/2010 filed by the petitioner seeking quashing of the said FIR.

3. The petitioner filed CrI.M.C. No.1430/2014 praying for quashing of criminal proceedings pending against the petitioner in relation to the said FIR. However, the said Criminal M.C. was dismissed as withdrawn on 24th March, 2014 as the petitioner had not challenged the framing of charge against her. Thereafter the petitioner filed CrI.M.C. No.1872/2014 before this Court challenging therein framing of charge against her by the Trial Court. This Court was pleased to dispose of the said petition vide order dated 1st September, 2015 observing that the impugned order dated 7th February, 2009 was passed in pursuance to the revisional order dated 12th September, 1996 which was required to be challenged by the petitioner, but no challenge to the revisional order dated 12th September, 1996 was made.

4. Learned counsel for the petitioner has argued that the order dated 12.09.1996 is contrary to the provisions contained in Section 399/401

Cr.P.C. This Court so far as the other two co-accused are concerned was pleased to quash the order dated 12.09.1996 passed by the learned Additional Sessions Judge, Delhi holding the same to be in contravention to Section 401(2) of Cr.P.C. The trial conducted by the Trial Court against the petitioner is on the basis of a false complaint to prevent the petitioner to return back to USA. It is further argued that the delay in filing the present petition has occasioned due to several petitions preferred by the petitioner before this Court.

5. The petitioner relies on the pronouncement of the Hon'ble Supreme Court in *Dhariwal Tobacco Products Limited & Ors. v. State of Maharashtra & Anr. (2009) 2 SCC 370* in which it was observed that availability of alternative remedy of filing revision under Section 397 Cr.P.C. could not be a ground to dismiss the application under Section 484 Cr.P.C.

The petitioner also relies on *Gurdev Singh v. Surinder Singh & Ors. 2014(9) SCALE 556* in which it was observed that no order shall be made by the High Court while exercising its power under Section 401 Cr.P.C. to the prejudice of the accused or the other persons unless he has had an opportunity of being heard.

The petitioner further relies on *Gian Singh v. State of Punjab & Anr. (2012) 10 SCC 303* in which the Hon'ble Supreme Court held that

power of High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from power of a criminal court of compounding offences under Section 320 Cr.P.C.

6. On the other hand, while opposing the present petition, the arguments advanced by learned APP for the State are that the FIR was lodged on 28th August, 1993 by the complainant. A closure report was filed by the investigating agency which was accepted and thereafter on 12th September, 1996, the Additional Sessions Judge, Delhi while setting aside the order dated 7th December, 1993 of the learned MM, remanded back the matter to Trial Court for trial of the accused persons including the petitioner. Nevertheless, till date the petitioner has not challenged the charges framed against her inspite of getting numerous opportunities to challenge the same. In fact, throughout the proceedings at the Trial Court level, the conduct of the petitioner was such that the Trial Court had to issue three non-bailable warrants against the petitioner on 1st April, 2013, 4th January, 2013 and 3rd September, 2013. He further submitted that the petitioner being a permanent resident of USA might flee from justice. The learned APP has specifically rebutted each and every ground raised by the petitioner for quashing of the said two orders.

7. Heard learned counsel for the parties at length.

8. It is an admitted position in the present case that vide order dated 12th September, 1996, the learned Additional Sessions Judge had set aside the order dated 7th December, 1993 vide which the learned Metropolitan Magistrate had discharged all the accused persons whereafter the Trial Court framed charges against the petitioner under Sections 506 & 452 read with Section 34 of IPC on 7th February, 2009. Vide orders dated 25th March, 2010 & 24th March, 2014, the petitions of the petitioner for quashing of the said FIR and for quashing the criminal proceedings pending against the petitioner in relation to the said FIR, respectively, were dismissed by this Court with a liberty to challenge the order on charge dated 7th February, 2009 passed by the Trial Court in accordance with law.

9. In *P.K. Ramachandran v. State of Kerala & Anr.*, AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

Further, in *Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649* the Hon'ble Apex Court laid down various principles inter alia:

“v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact vi) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

10. Laches have important bearing while deciding such petitions. Persons whose right is being intruded by the opposite parties must keep vigil and must not sleep over their right. Law needs to be put into motion as and when somebody's legitimate rights are invaded otherwise it will be taken that he has given consent to the other party to carry on with the affairs. Therefore, prima-facie the petitioner is guilty of laches. Laches is an "unreasonable delay pursuing a right or claim in a way that prejudices the opposing party". It is an equitable defence, that is, a defense to a

claim for an equitable remedy. In other words, failure to assert one's rights in a timely manner can result in a claim being barred by laches. Laches is associated with one of the maxims of equity *Vigilantibus non dormientibus æquitas subvenit*. (Equity aids the vigilant, not the sleeping ones).

11. The judgments in the case of ***Dhariwal Tobacco Products Limited & Ors (supra), Gurdev Singh (supra) and Gian Singh (supra)*** relied upon by the petitioner in support of her case are based on completely different grounds and thus do not render any support to the case of the petitioner.

12. The plea taken by the counsel for the petitioner invoking Section 482 Cr.P.C. is that there is considerable delay in not filing the revision and non-filing of the revision would not come in the way of invoking Section 482 Cr.P.C. to use the inherent powers of this Court.

13. The argument advanced by the counsel for the petitioner is not acceptable as the inherent powers of the Court under Section 482 Cr.P.C. are meant for the cases when there is no express provision of law to a person to have its remedy. Wherever there is express provision of law, which could have been invoked by the petitioner, the inherent power ought not to be exercised to circumvent the express provisions of law. In other words, despite having the remedy under the law, the petitioner did

not chose to avail the same. Then subsequently after a long delay and laches, Section 482 Cr.P.C. need not to be exercised to curb the delay caused on the part of the petitioner in not challenging the law by invoking the express provisions of Cr.P.C. i.e. in the present case the petitioner had to invoke the revisional jurisdiction against the order dated 12.09.1996 within the prescribed period of limitation of 90 days.

14. So, at this stage, after a delay of about 19 years, the petitioner is not entitled to have any relief under Section 482 Cr.P.C. More the reason, inherent powers of the High Court are meant to prevent the abuse of process of law and to meet the ends of justice, which is available to an aggrieved person to avoid unnecessary delay and to put an end to the proceedings and in the present case it is otherwise.

15. In the facts and circumstances, this Court is of the considered opinion that the petitioner is not entitled to have any relief under Section 482 Cr.P.C.

16. The petition is accordingly dismissed.

(P.S.TEJI)
JUDGE

SEPTEMBER 28, 2015

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