IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 1637-CII of 2016 &
FAO No. 580 of 2016

Date of decision: January 25, 2016

Nirmala Devi and another

.....APPELLANTS

Versus

Directorate of Enforcement through its Deputy Director

.....RESPONDENT

C.M. No. 1638-CII of 2016 &
FAO No. 581 of 2016

Karampal Goyal

.....APPELLANT

Versus

Directorate of Enforcement through its Deputy Director

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Aggarwal, Sr. Advocate,
with Mr. Mukul Aggarwal, Advocate,
and Mr. Deepak Gupta, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide FAO No. 580 of 2016 titled as Nirmala Devi and another vs. Directorate of Enforcement and FAO No. 581 of 2016 titled as Karampal Goyal vs. Directorate of Enforcement, wherein challenge is to the order dated 06.10.2015 passed by the Appellate Tribunal, Prevention of Money Laundering

Act, 2002 (hereinafter referred to as PMLA, 2002) at New Delhi, whereby the appeals preferred by the appellants along with the applications for condonation of delay of 863 days and 122 days in filing the appeal have been dismissed by a common order on the grounds of limitation.

2. Learned senior counsel for the appellants has argued FAO No. 580 of 2016, which is treated as the lead case at his request as he states that the pleadings and the grounds in both these cases are similar and identical and arise out of the same scheduled offence and can be disposed of by a common order.

3. The facts in brief are that on a complaint of the Civil Surgeon, Shaheed Bhagat Singh Nagar, an FIR No. 09 dated 22.01.2009 (Annexure A-1) was registered under Sections 409, 420, 465, 467, 468, 471, 201 and 120-B IPC and Section 13 (1) and 1 (2) of the Prevention of Corruption Act, 1988 at Police Station Rahon, District Nawanshahar against Sh. Karampal Goyal (appellant No. 2 in the present appeal), who was working as a Pharmacist in the office of the Senior Medical Officer, Primary Health Centre, Mujaffarpur Village, District Shaheed Bhagat Singh Nagar, Punjab for fraudulently withdrawing funds from the General Provident Fund Accounts of his fellow employees by preparing forged sanctioned orders in association with other officials i.e. Dr. Krishan Lal, Dr. Jugraj Singh, Dr. Hardev Singh and Shalinder Singh.

4. The charge-sheet dated 27.11.2009 was filed in the Court of Additional District and Sessions Judge, Nawanshahar, District Shaheed Bhagat Singh Nagar. The Senior Superintendent of Police,

Shaheed Bhagat Singh Nagar, Punjab, after presentation of challan, requested the Deputy Director, Directorate of Enforcement, Chandigarh to take action against appellant No. 2 under the PMLA, 2002 vide letter dated 01.02.2010. In the meanwhile, the Superintendent of Police (Detective), vide application dated 04.02.2010, requested the Special Court, Nawanshahar to attach the properties of the appellants in the criminal case pending trial. An order dated 06.02.2010 (Annexure A-3) was passed by the Special Court allowing the said application and attaching provisionally the property, as detailed in Annexures P-4, P-5 and P-6.

5. On the basis of the letter dated 01.02.2010, the respondents registered an Enforcement Case Information Report No. 01/CHD/2010 dated 05.02.2010 under the PMLA, 2002. The investigation was initiated by the respondents and a provisional attachment order dated 08.03.2011 (Annexure A-4) was passed. The said provisional attachment order was confirmed by the adjudicating authority vide order dated 05.03.2012 (Annexure A-5). After the passing of the confirmation order, the appellants failed to file any appeal, which was provided for under Section 26 of the PMLA, 2002 and slept over the matter till 18.06.2014 when 8-9 officers of the respondent-department came to the residence of the appellants and asked about the payment of property tax and to produce papers of the properties. An effort was made by them to take actual possession of the properties.

6. It is then that the appellants consulted a counsel in Chandigarh, who demanded the whole record which was provided on

25.06.2014. He advised the appellants to file an appeal, when the appellants contacted the counsel for filing an appeal, before the Appellate Tribunal, Prevention of Money Laundering Act at New Delhi. The appeal along with the application for condonation of delay was prepared on 14.07.2014 and was filed on 18.07.2014. In the said appeal, the order under challenge was dated 05.03.2012, which challenge was delayed by 863 days. In the other appeal i.e. FAO No. 581 of 2016, which was preferred by the appellant-Karampal Goyal, the order under challenge was dated 29.01.2014 passed by the adjudicating authority in original complaint No. 216 of 2013 confirming the provisional attachment order No. 01/2013 dated 27.09.2013, which was delayed by 122 days.

7. The Appellate Tribunal had considered the plea as taken by the appellants which was that the appellants were not aware about the remedy available to them under the law against the order passed by the adjudicating authority and due to ignorance of law, the appellants did not file the appeal before the Tribunal and further that they were fully dependent upon the advise of the counsel who never advised them about the remedy of appeal. They were under the impression that the properties are in custody of the trial Court which would decide the fate of the case. In fact, the plea is ignorance of law as the appellants pleaded that they were not aware of the intricacies of law and lack of advise by the counsel. These pleas were, in detail, considered by the Appellate Tribunal vide the impugned order and dismissed their application for condonation of delay by a common order dated 06.10.2015 in both the appeals

dismissing the applications for condonation of delay and as a consequence thereof, the appeals being barred by time. These orders are under challenge in these appeals.

8. It is the contention of the learned senior counsel for the appellants that the learned Appellate Tribunal has proceeded in a hyper technical manner. The appellants are laymen and are not aware of the intricacies of law and, therefore, are fully dependent upon the advise of the counsel who never advised them to avail of their remedy of appeal. In any case, he contends that the spirit of law has not been grasped by the Appellate Tribunal, which is to uphold the constitutional rights of a person as he should not be deprived of the legal remedies because of legal assistance. Being not conversant with law, legal aspects and procedures in itself is a disability and especially when, there is no mala-fide intention of the appellants in not filing the appeal within the time prescribed, the Appellate Tribunal should have taken a lenient view by interpreting the term 'sufficient cause' and giving it a meaningful purpose in such a way that the ends of justice are sub-served. By the impugned order, a meritorious appeal, at the very threshold, has been thrown out causing denial of justice. He contends that the substantial justice has to be preferred over and above the technical considerations when pitted against each other and such orders cannot sustain because the very object of providing a legal remedy is deprived. The law of limitation is founded on public policy with an intention to avoid delays and dilatory tactics and liberal approach has to be adopted by the Courts/Tribunals while considering the applications for

condonation of delay especially when no prejudice is caused to the other party. The miscarriage of justice and denial of justice to the appellants should be avoided. This, he contends, is the settled preposition of law by the various Courts including the Supreme Court. In support of these assertions, he has placed reliance upon the various judgments of the Supreme Court i.e. **Union of India** vs. **Giani,** (2011) 11 SCC 480, **Collector, Land Acquisition, Anantng** vs. **Mst. Kstiji,** 1987 (2) SCC 107, **N. Balakrishnan** vs. **M. Krishnamurthy,** (1988) 7 SCC 123, **State of Nagaland** vs. **Lipok AO and Others,** 2005 (3) SCC 752, **State of Bihar & Ors** vs. **Kameshwar Prasad Singh & another,** JT 2000 (5) SC 389 and **M/s Motilal Padampat Sugar Mills Co. Ltd.** vs. **State of U.P. and others,** 1979 AIR (SC) 621. He, on this basis, contends that the impugned orders deserve to be set aside and the applications for condonation of delay be allowed and the case be remanded to the Appellate Tribunal for decision on merits.

9. I have considered the submissions made by the learned senior counsel for the appellants and with his able assistance, have gone through the impugned orders as also the judgments, on which he has placed reliance.

10. The principles, as have been laid down in the above referred judgments in the light of the arguments, as put forth by the learned senior counsel, cannot be disputed with but the said principles cannot be made applicable to each case as the said principles are applicable depending upon the facts and circumstances of the case in hand. The bona-fides of the party,

which has approached the Court and the pleas taken in explaining the delay have to be taken into consideration and above all, sufficient cause has also to be taken into consideration as to whether the minimum required caution, diligence and efforts have been put in. When mandatory provisions are not complied with, then the delay has to be properly, satisfactorily and convincingly explained and mere sympathetic and lenient view has not to be taken if there is negligence which can be termed as deliberate or gross in-action or lack of bona-fides on the part of the party. Each case has to be considered on the particular facts and circumstances of that very case and no straightjacketed principle can be laid down in this regard. It is true that the impression 'sufficient cause', as mentioned in Section 5 of the Limitation Act, must receive a liberal approach with an intent to advance substantial justice especially when, there is no gross negligence or deprived in-action or lack of bona-fides in approaching the Appellate Authority/Court but where there is lack of these aspects, the Court has to step in by not granting undue benefit to such parties.

11. In the present case the plea, as has been taken, is that the appellants were not aware of the remedy of appeal available to them under Section 26 of the PMLA, 2002 nor were they advised to file an appeal by their counsel. This plea cannot be accepted in the light of the fact that the appellants had filed objections under Section 482 of the Code of Criminal Procedure being Crl. Misc. No. M-693 of 2011 and Crl. Misc. No. M-13453 of 2011 before this Court for quashing of the order dated 08.12.2010 as well as the subsequent

provisions taken in pursuance thereof, whereby summons were issued by the Enforcement Directorate in exercise of powers under Section 50 of the PMLA, 2002. There the respondents had taken an objection with regard to the availability of a remedy of appeal under Section 26 of the PMLA before the Appellate Tribunal against the order of the Adjudicating Authority, which the counsel for the appellants had not disputed. This Court, in its order dated 11.01.2012 not only referred to this aspect but reproduced the provisions of the PMLA, 2002 including Section 26. The relevant portion of the order has been reproduced in para-18 of the order passed by the Appellate Tribunal. Therefore, it cannot be said that the appellants were not aware of not only the provisions initiated against them under the PMLA, 2002 but also of the statutory remedy of appeal as provided under Section 26 of the PMLA, 2002 before the Appellate Tribunal. As a matter of fact, the first impugned order is dated 05.03.2012, which was passed by the Adjudicating Authority and the proceedings before the High Court took place prior to 10.01.2012 when adjudicating proceedings were pending before the Adjudicating Authority.

12. Further, it has been asserted that the appellants had approached the counsel at Chandigarh on 18.06.2014 and the papers were handed over to him on 25.06.2014 when he advised to file an appeal before the Appellate Tribunal. The name of the counsel has not been disclosed as to who did not advise the appellants to file an appeal nor was the date of such consultation/advise mentioned because a plea has been taken by the

appellants that their counsel did not advise them about the remedy of appeal available to them. It can, therefore, safely be said that the appellants have not availed of the remedy of appeal despite being aware of the said remedy. The ignorance of law, although taken as a plea, cannot be a ground for seeking condonation of delay. Merely because they were not conversant with law nor their counsel guided them properly can itself not be treated as sufficient cause for not approaching the Appellate Authority within the limitation prescribed.

13. The Hon'ble Supreme Court in **Board of Directors H.P.Transport Corporation** vs. **K.C.Rahi,** (2008) 11 SCC 502, has held that ignorance of law is not an excuse and it cannot, therefore, be a ground to rely upon the said plea for not filing the appeal within the time prescribed. The Appellate Tribunal, in its impugned order, has, in detail, considered the pleadings and the facts in detail and on due deliberation thereof as also the law, as applicable, has proceeded to decide the applications for condonation of delay in accordance with law, which can neither be flowed on facts or on the principles of law as applicable and applied. Therefore, there is no merit in these appeals and thus, are dismissed.

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In view of the dismissal of the main appeals, no separate orders are required to be passed in these applications for vacation of stay and, therefore, the same stand dismissed.

(AUGUSTINE GEORGE MAISH)
JUDGE

January 25, 2016
pj