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

\+ CRL.REV.P. 318/2014

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP

versus

I S PIMOLI

..... Respondent

Through: M/s S.Chaturvedi, Ashish Tanwar, Vikas, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**<u>O R D E R</u>**

% **04.08.2016**

**<u>Crl.M.A. No. 8475/2014</u>**

By this application, the petitioner seeks condonation of delay of 200 days' delay in filing the present revision petition. The impugned order was passed by the trial court on 26.07.2013. The applicant states that within the stipulated period, the file pertaining to the present case was forwarded by the office of Director of Prosecution on 22.08.2013 to the office of Principal Secretary of Law and Justice, and thereafter, the Assistant Legal Advisor forwarded the file on 26.08.2013 through proper channel. Finally, the matter was sent up for filing of the present revision petition to the office of the Standing Counsel (Criminal) on 09.09.2013 with voluminous record.

Thus, it would be seen that the decision to file the present petition had been taken within about one and half months of the passing of the impugned order. The reason given for the petition not being preferred within the period of limitation of 90 days is that the file was taken for pursuing the trial court matter on 16.09.2013 since the case involved several other accused, and the same was returned back on 01.05.2014. This period of about seven and half months resulted in delay of about 200 days' delay in filing the present revision petition. The applicant states that initially, the matter was assigned to the APP on 05.05.2014 and the revision petition was preferred within about 10 days thereof. The applicant relies upon ***Collector, Land Acquisition Vs. Katiji*** (1987) 2 SCC 107 wherein the Supreme Court observed that refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As opposed to this, when delay is condoned, the highest that can happen is that a case would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of non-deliberate delay. Reliance is also placed on ***State of Nagaland Vs. Lipok*** (2005) 3 SCC 752 where the Supreme Court held that sufficient cause should be considered with pragmatism in a justice-oriented approach rather than on technical consideration.

The application is opposed by the respondent. Learned counsel for the respondent submits that the delay is substantial i.e. 200 days and more. Administration lapses cannot be a reason to condone the delay. In this regard, he places reliance on ***Delhi Development Authority Vs. Ramesh***

***Kumar Budhiraja,*** Crl.L.P. No. 4 of 2013 decided on 11.02.2014. In this case, delay of 237 days in filing the leave petition was found by the Court to be not sufficiently explained. In this decision, this Court referred to and relied upon several decisions, including, the decision in ***Postmaster General Vs. Living Media India Limited*** (2012) 3 SCC 563 wherein the Supreme Court has observed in relation to 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.

Reference was also made to ***State of Rajasthan Vs. Bal Kishan Mathur*** (2014) 1 SCC 592 wherein the Supreme Court observed that condonation of delay cannot be matter of course and that the State cannot claim any preferential or special treatment. Only where there has been no gross negligence or a deliberate inaction or lack of bona fides that a liberal view has to be adopted to advance substantial justice.

Having heard learned counsels and perused the record, I am inclined to allow the present application.

As noticed hereinabove, so far as the administrative decision to prefer the present revision petition is concerned, the same was taken well within the period of limitation. Since there were other co-accused against whom charges had been framed and the file was common, the same was taken for pursuing the trial court matter on 16.09.2013 and returned back only on 01.05.2014. It was on this account that the preparation of revision petition got delayed. After the file was received back by the Additional Public

Prosecutor on 05.05.2014, the present petition was preferred within 10 days. In the matter of consideration of the aspect whether sufficient cause is disclosed to seek condonation of delay, each case is to be examined on its own facts. Therefore, the decision rendered in another case cannot be lifted and applied by the courts while dealing with a particular case. It is only the principles laid down by the courts which would be applicable to the facts on the basis of which each case has to be tested. It certainly cannot be said in the facts of the present case that there was gross negligence or deliberate inaction or lack of bona fides on the part of the State which led to delay of 200 days' delay in preferring the present revision petition.

In ***Bal Kishan Mathur*** (supra), the Supreme Court has held that in such like cases, liberal view has to be adopted to advance substantial justice. In the light of the principles laid down in ***Katiji*** (supra), I am of the view that the State has disclosed sufficient cause to seek condonation of delay and the present application is allowed.

**Crl. Rev. Petition No. 318/2014**

The present petition has been preferred to assail the order dated 26.07.2013 passed by the learned Special Judge (PC Act)-05 (ACB), Central, Tis Hazari Courts, in case FIR No. 03/09, PS ACB under sections 13(i)(d) and 13(2) of the Prevention of Corruption Act and 419/420/467/468/471/120B/511 read with section 201 IPC, whereby the respondent I.S.Pimoli has been discharged from the case while charges have been framed against all other accused. Insofar as the respondent I.S.Pimoli is concerned, the trial court observed as follows:

> *"10.1 Accused I.M.Pimoli was working as Deputy Controller (Finance and Accounts). He has recommended administrative*

*approval and expenditure sanction on 06.09.2005. The file hd been brought to him on 06.09.2005 by accused Rajeshwari Chauhan by hand. He has cleared both the files on the same day and recommended grant of administrative approval and expenditure sanction. The suspicion regarding his involvement in the conspiracy is raised on two counts. Firstly, that the files were marked by superintendent V.S.Awasti to DO (North) which marking was erased by white fluid and marked to him as DC/F&A. It is thus the case of the IO that he did not object to receiving files without being routed through proper channel. Secondly, it is argued that files were brought to him personally by hand by accused Rajeshwari Chauhan.*

*10.2 Both the counts of suspicion are matter of record. These aberrations should have raised suspicion in the mind of DC/F&A. He should have exercised more caution in dealing with the file. However, his note recommending the grant of approval & sanction is based on the certificate issued by the Superintendent/DDO/HO of both the homes, 'that codal formalities had been complied with. There is nothing on record to indicate his involvement or his knowledge that the codal formalities had been fabricated/forged. In the absence of his knowledge of an involvement in fabrication of records, his act cannot be attached mens rea; which is a pre-requisite for criminal charge. His action of ignoring the irregularities may amount to administrative misconduct or dereliction of duties, but in my opinion would not attract criminal charge. His recommendation indicates all the formalities which the DDO/HO should have complied with. I am, therefore, of the opinion that acts/omissions of accused I.S. Pimoli DC/F&A do not raise suspicion grave enough for him to be put to trial. He is accordingly discharged from this case."*

The submission of Mr. Katyal, learned APP is that the trial court fell in error in not appreciating the role alleged against the respondent and also failing to appreciate that at the stage of framing of charges, only a prima facie case is required to be made out by the prosecution against the accused.

The principles on which the trial court is required to proceed while examining the aspect of framing of charge/discharge of the accused are well settled in ***Rita Handa Vs. CBI,*** Crl. Revision Petition No. 965/2006, decided on 01.08.2008. After noticing several earlier decisions of the Supreme Court and of this Court, this Court observed:

> *"The court has repeatedly held that the Court at the stage of framing charges has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him will give rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 of the Code the Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

In this decision, this Court also commented on the scope of examination that this Court would undertake as a revisional court in such like cases. This Court observed:

> *"Thus, the High Court in revision while exercising supervisory*

*jurisdiction of a restricted nature is justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the Ld. Trial Court is correct. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice."*

The submission of Mr. Katyal is that there are two cases of irregularity and fraudulent purchase made by Bal Sadan and HHCLP wherein the primary accused Smt. Rajeshwari Chauhan along with Mahesh Kumar Sharma, R.K.Sharma resorted to award contracts to the daughter of Smt. Rajeshwari Chauhan for procuring articles for the said organizations. The respondent I.S.Pimoli was, at the relevant time, functioning as Deputy Controller/Finance & Accounts ('DC/F&A' for short) in the department of Social Welfare during the year 2005-06 when co-accused R.K.Sharma was also working under his supervision. In relation to the purchase of articles for Bal Sadan and HHCLP, when the file was put before respondent I.S.Pimoli, the same were not put up through proper channel. There were interpolations on the files when it was so put up before him. Despite the same, he did not see anything suspicious and proceed to deal with the file. According to the prosecution, the respondent – who was heading the branch as DC/F&A cleared the proposal in respect of the aforesaid purchases on the same day on which he received the files, ignoring the fact that these files have not been received by him through Dak and even not marked to him by the appropriate authority i.e. District Office (North). He even did not raise any objection that the marking of DO(North) was removed through correcting ink/white fluid.

So far as the purchase for Bal Sadan was concerned, he put his note for “ex post facto” sanction, even though in the file it was not mentioned that the purchases had already been made, and the sanction being sought ex post facto. The respondent, however, was aware that the purchase had already been made, and sanction was being sought ex post facto. There is no reasonable explanation for the said knowledge of the respondent. Mr. Katyal submits that this itself demonstrated, prima facie, involvement of the respondent in the conspiracy.

In the case of procurement for HHCLP , the proposal for expenditure sanctioned by DDO/HO was for the amount of Rs. 1,94,670/-. However, the respondent actually recommended sanction for Rs. 1,71,095/-. On the file, neither the details of the bills, nor the bills were placed. As to how the respondent came to the figure of Rs. 1,71,095/- while recommending the said amount, is not disclosed. Mr. Katyal submits that the aforesaid aspects have been completely ignored by the trial court while discharging the respondent on the ground of mere procedural irregularity. He submits that the so called mere irregularity has to be viewed in the light of involvement of the other accused noted above.

On the other hand, the submission of learned counsel for the respondent is that he had only made the recommendations, and his superior, namely, Joint Director (Administration) was the sanctioning authority. He submits that no action has been taken by the Joint Director (Administration). The further submission of learned counsel for the respondent is that no fault can be found with the respondent when, as a matter of fact, so far as the

HHCLP case is concerned, as opposed to the expenditure proposal for Rs.1,94,670/-, he had recommended the lesser amount of Rs. 1,71,095/-. He submits that after the file was processed by him, the same was returned and it is not for the respondent to explain as to whether, or not, there were any bills or details of bills found on the record when the same may have been seized by the prosecution. He further submits that so far as the recommendation for grant of sanction in respect of purchase of Bal Sadan is concerned, the note put up before him was in relation to ex post facto sanction only.

Learned counsel for the respondent submits that though the impugned order does not so reflect, there were several other circumstances which weighed in mind of the trial court while discharging the applicant. He has sought to advance other submissions to support this submission that a prima facie case is not made out against the respondent.

In this regard, he has referred to documents annexed with the charge sheet. However, I do not consider it necessary to refer to them at this stage in great detail in view of the final order that I propose to pass.

In the present revision petition, I am only examining the limited aspect of validity of the reasoning adopted by the trial court while discharging the respondent. The said reasoning is contained in para 10.1 and 10.2 as extracted above. The trial court, in my view, has taken a very narrow view of the matter while recording its reasons in para 10.1 and 10.2, as aforesaid. The other aspects qua the role of the respondent, which are set out in the charge sheet in para 25 of the supplementary charge sheet no.2 have not been considered by the trial court, which ought to have been so considered before arriving at a conclusion whether, or not, a prima facie case is not made out against the respondent. I do not wish to elaborate further on the aforesaid aspects lest the same works to the prejudice of the respondent. Consequently, the impugned order is set aside.

The trial court shall now re-consider the aspect of framing of charge against the respondent/ his discharge by taking an overall view of the case made out against the respondent in the charge sheet, based on the materials relied upon by the prosecution. The aspect of framing of charge/ discharge of the respondent shall be considered afresh after hearing the parties and it shall be open to the parties to advance their submissions. However, it is clarified that if it is inclined to discharge the respondent, the trial court shall not adopt the reasoning as found in para 10.1 and 10.2 as the only grounds for discharge of the respondent.

The respondent shall appear before the trial court on 26.08.2016. On the aforesaid aspect, the arguments shall be heard by the trial court within a month thereof, and the on-going trial against the other accused shall proceed unhindered.

Petition stands disposed of in the aforesaid terms.

**VIPIN SANGHI, J**

**AUGUST 04, 2016**
sl/sr