



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Eighth day of June Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

WEB COPY

CRL MP(MD) No.10771 of 2016

IN

CRL A(MD) No.SR38585 of 2016

THE STATE REP.BY,
THE PUBLIC PROSECUTOR,
HIGH COURT,
MADRAS 600 104
(VILAKKUTHOON POLICE STATION
CR. NO. 946 OF 2011)

... PETITIONER/APPELLANT/
COMPLAINANT

Vs

1 JAHIR HUSSAIN

2 RABEEK RAJA

... RESPONDENTS/RESPONDENTS/
ACCUSED NO.1 AND 2

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to condone the delay of 1366 days in filing the Appeal against the Judgment made in SC No. 157 of 2002 on the file of the VI Additional District Judge, Madurai and pass such further or other orders.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.C.MAYILVAHANA RAJENDRAN, ADDITIONAL PUBLIC PROSECUTOR, for the petitioner and of MR.S.M.A.JINNAH, Advocate for R1 and R2, the court made the following order:-

This Criminal Miscellaneous Petition has been filed by the Petitioner / Complainant, praying to condone the delay of 1366 days in filing the Appeal against the Judgment made in S.C.No.157 of 2012, on the file of the VI Additional District Judge, Madurai.

2. The State is the Appellant / Complainant in this Appeal. The Appeal is preferred against the Judgment, dated 30.10.2012, passed by the learned VI Additional District Judge, Madurai, acquitting the respondents / accused from all charges in S.C.No.157 of 2002 on its file.



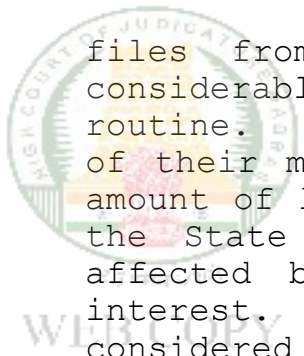
said Sessions Case. The Appeal has been filed on 20.10.2016, before this Court along with a petition to grant Leave against the Judgment, dated 30.10.2012, acquitting the respondents herein, the present petition is filed to condone the delay of 1366 days in filing the said appeal before this Court.

4. In the affidavit filed along with the petition in which it is stated that the Commissioner of Police, Madurai City, has sent the relevant records to the Statement Government Advocate, High Court on 17.12.2013 in order to prefer an appeal against the Judgment in S.C.No.157 of 2002, on the file of the learned VI Additional District Judge, Madurai, to set aside the acquittal Judgment and owing to the transfer of then Inspector of Police. The deponent of the affidavit was not able to follow the case properly and hence, the appeal was not filed within the stipulated time fixed in the Limitation Act and the Appeal ought to have been filed within 90 days from the date of the Judgment and due to the above said *bonafide* reasons, the present Appeal was not filed within 90 days.

5. The learned Government Advocate (Crl.side) appearing for the Petitioner / Complainant, on instructions, would submit that this Court and the Hon'ble Supreme Court time and again held that liberal approach has to be followed for condonation of delay in filing the Appeal and if the delay is condoned and that the appeal is disposed of on merits, no one would be caused any prejudice and if the appeal is dismissed on the short ground of delay, the appellant will be put into great hardship and irreparable loss.

6. Continuing further he would submit that the trial Court held that the investigation was being conducted with *mala fide* and the said observation made by the trial Court is without any materials and this Court and the Hon'ble Supreme Court time and again held that unnecessary comments should not be made against the officials, who are not present in the Court and to give an opportunity to explain their case and hence, in the interest of justice, the delay of 1366 days in filing the above Appeal is to be condoned.

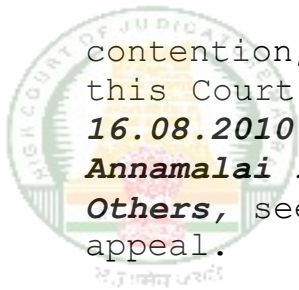
7. In support of his contention, the learned Government Advocate (crl.side) appearing for the petitioner / complainant referred the decision of the Hon'ble Apex Court in **State of Haryana Vs. Chandra Mani and Others** reported in **(1996 (3) SCC 132)** wherein it has been held that "Section 5 of the Limitation Act gives power to the Court to admit the appeal or application after the prescribed period. The Supreme Court generally adopts a liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though decisions are taken by officers / agencies proverbially at slow pace and encumbered process of pushing the



files from table to table and keeping it on the table for considerable time causing delay - intentional or otherwise is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. Litigants including the State are accorded the same treatment and the law is administered in an even-handed manner.

8. The Government at appropriate level should constitute legal cells to examine the causes whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal the needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application, since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

9. The learned counsel appearing for the respondents would submit that the trial Court passed the Judgment on 30.10.2012, but the present appeal and the impugned petition to condone the delay came to be filed only on 21.10.2016, which has handled by four years delay to prefer the appeal and the reason given in the affidavit is false, since the then Inspector of Police, Vilakkuthoon Police frequently worked at Madurai area and the petitioner failed to explain the reason for each and every day delay in preferring the appeal and the trial Court in its Judgment found the malice done by the Vilakkuthoon Police in prosecuting the case and the trial Court clearly gives the findings and reasons for its view and hence, a civil Suit in O.S.No.571 of 2017 against the Inspector of Police Vilakkuthoon Police for their illegal act. Though they rendered their appearance with counsel, they failed to contest the case. As such, on 10.08.2016, an exparte decree was passed and after knowing the decree in civil Suit, the Vilakkuthoon Police and other officials preferred this appeal and thereby challenging the findings given by the trial Court and hence, the delay of 1366 days cannot be condoned without sufficient cause and this petition is liable to be dismissed. The counsel for the respondents in support of his



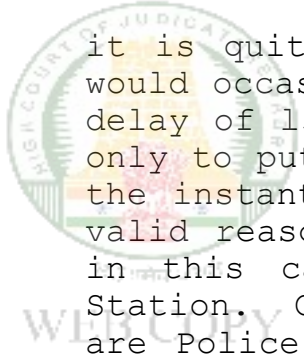
contention, cited the decision made in an unreported Judgment of this Court in **M.P.No.1 of 2010 in Crl.A.No.SR. 12951 of 2010, dated 16.08.2010 between State represented by the Inspector of Police Annamalai Nagar Police Station, Cuddalore Vs. S.R.@ S.Rajendran and Others**, seeking condonation of delay of 435 days preferring the said appeal.

10. Perused the materials on record and also heard and considered the rival submissions made by either side.

11. Admittedly, the trial Court Judgment was passed on 30.10.2012 in which the trial Court held that the investigation was being done by the prosecution with *mala fide* and the case is malice one and amounts to malicious prosecution and taking advantage of the said order, the respondents herein filed a civil Suit in O.S.No.571 of 2013, on the file of Principal District Munsif Court, Madurai, seeking damages for malicious prosecution against the police officials and an ex-parte decree was passed on 10.08.2016, to pay a sum of Rs.1,00,000/-.

12. The limitation is a valuable right that would accrued to a successful parties in a litigation and more so to an accused in a criminal case, who has been acquitted. It has been pointed out that when a certified copy of the Judgment was applied and was obtained is not stated in the affidavit. It is also admitted by the deponent that the Commissioner of Police, Madurai, after sending the relevant records strictly directed the subordinate officials to follow the appeal to be filed before the this Court. But, the appeal was filed only on 25.10.2016, before this Court. No valid reasons assigned for the delay, as to why the case records were kept pending in the Office of the State Government Advocate, High Court, Madras, after receipt of the case records from the Commissioner of Police, Madurai. Though it is admitted that a duty is caused upon the successor Inspector of Police, Vilakkuthoon, they failed to follow the case properly. No valid reason is assigned for it. When the then Inspector of Police, Vilakkuthoon was transferred is not stated in the affidavit. No reason for delay is stated after the date of Judgment. It is also admitted that a civil Suit was also filed in the year 2013 itself against the Police officers, on the basis of this criminal case, seeking damages for malicious prosecution. Further, an ex-parte decree was also passed on 10.06.2013. Thereafter only, the Commissioner of Police, Madurai, has sent the case records on 17.10.2013 itself to the State Government Advocate, Madras, for filing Appeal. The present Appeal was filed only on 25.10.2016 with inordinate and enormous delay only on the basis of the certified copy of the Judgment applied on 25.10.2016 and delivered on the same day by the concerned Court, which is also annexed in the Appeal Memorandum.

13. The entire affidavit does not make out any reasons much less valid reasons. An Appeal has got to be filed, as per the provisions of Law within 90 days. There must be some meaning in prescribing the period of limitation for preferring an appeal. It is true that whenever an appeal has got to be preferred by the State



it is quite natural that in the administrative process, the delay would occasion. But, in a given case like this, when an inordinate delay of 1366 days is noticed, a duty is caused upon the State not only to put forth reasons but also valid and acceptable reasons. In the instant case, this Court is unable to see any reason much less valid reason to condone such an inordinate delay. The complainant in this case is a Sub-Inspector of Police, Vilakkuthoon Police Station. Out of 7 witnesses by the prosecution side, five witnesses are Police officials. It is not the time now where the Court is called upon to consider the merits or otherwise of the Appeal. The decision referred by the learned Government Advocate does not help and support the case of the petitioner in any way. Under such circumstances, as far as the delay is concerned, without any valid reasons, it is not a fit case where it could be condoned.

14. In the result, this petition stands dismissed. The Criminal Appeal in Crl.A(MD)SR.No.38585 of 2016 at the S.R., stage itself is rejected.

sd/-
08/06/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE VI ADDITIONAL DISTRICT JUDGE, MADURAI.
- 2 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS 600 104
(VILAKKUTHOON POLICE STATION CR. NO. 946 OF 2011)
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

MPK
SM:RR:SAR 1:19.6.2017:5P/4C

ORDER
IN
CRL MP (MD) No.10771 of 2016
IN
CRL A (MD) No.SR38585 of 2016
Date :08/06/2017