

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4595 OF 2016

Ms. Kusum Roop Singh ... Petitioner

Versus

State of Maharashtra ... Respondent

Mr. Kaushal Thakker for Petitioner.
Mr. S. S. Pednekar, APP for Respondent - State.

**CORAM : NITIN W. SAMBRE, J.
DATE : APRIL 24, 2018.**

P.C. :

. The present Writ Petition is preferred against the order dated 1st December 2016 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, dismissing the Revision Application No. 203 of 2016 and confirming the order passed by the learned Metropolitan Magistrate, 10th Court, Andheri dated 5th May 2016 of condoning the delay in submitting the chargesheet in Crime No. 126 of 2011 for an offence punishable under Section 294 read with Section 34 of

the Indian Penal Code and Section 33 (W) of Bombay Police Act against the present Petitioner.

2. It is the case of the Petitioner that chargesheet in the matter was very much ready on 30th January 2012. So as to substantiate the same, he would draw attention of this Court to Page No. 47. According to him, for condoning the delay caused in submitting the chargesheet which is of more than four years, the only cause cited in the Application for condonation of delay about death of one Mr. Jagtap, who claimed to be Investigation Officer, is incorrect. He submits that in the aforesaid background, the order impugned condoning the delay, accepting the chargesheet and dismissing the Revision Application are liable to be quashed and set-aside and Applicant is liable to be discharged in the aforesaid crime.

3. While resisting the claim, the learned APP submitted a report of the Senior Police Inspector, Jogeshwari Police Station, Mumbai dated 23rd April 2018. According to him, reason cited viz – death of Mr. Jagtap does not appeared to be a justifiable cause, but the contents in the report dated 23rd April 2018 speaks voluminous about the cause for condonation

of delay in submitting the chargesheet. According to him, the investigation in the matter was completed within time, however, the then Investigation Officer who has already retired from the service delayed submission of chargesheet which was returned by the Court of Magistrate at the relevant time. It is because of retirement of the Investigation Officer, the matter remained unattended. He submits that appropriate orders can be passed *qua* the negligence or failure to perform duty by an official is noticed, however, for such default no latitude can be given to the Petitioner - Accused. He sought dismissal of the Petition.

4. Considered rival submissions.

5. The scheme of Section 173 read with Section 473 of the Code of Criminal Procedure, if taken into account, Sub Section (1) and (2) of Section 173 of the Code of Criminal Procedure (for short, 'the Code') contemplates the submission of chargesheet upon completion of the investigation at the earliest. Upon perusal of the copy of final report submitted under Section 173 of the Code, it appears that offence was registered on 16th September 2011, whereas the chargesheet was kept ready on 30th January 2012. Prima facie it appears that the officials appear

to be negligent in submitting the chargesheet against the Accused. An attempt on the part of the Police Station Officer to submit the chargesheet in 2013 appears to have been turned down before the court of learned Magistrate having noticed that there is no explanation, whatsoever, for delayed submission of the challan under Section 173 of the Code.

6. However, the details as are narrated by the Senior Police Inspector, Jogeshwari Police Station, Mumbai in the report dated 23rd April 2018 produced before this Court speaks voluminous about the callous and negligent attitude of the officials. The same can be inferred from the fact that on 30th January 2012 the final report was ready, but still for the reason best known to the Investigation Officer and senior officials, same was not submitted much less explaining the delay caused in submitting such challan.

7. However, the negligent and callous attitude on the part of the official cannot be read in favour of the Applicant – Accused, when upon perusal of the final report there appears to be sufficient material produced against the Applicant – Accused.

8. For the aforesaid reasons, in my opinion, since the delay in submitting final report under Section 173 of the Code is explained, no interference is called for in the order impugned accepting the challan/final report against the Applicant – Accused.

9. However, having noted the events as recorded herein above and the report of the Senior Police Inspector, Jogeshwari Police Station, Mumbai dated 23rd April 2018, it can be prima facie inferred that either the Investigation Officer or the other senior officials who should have supervised the act of filing the final report has failed in their duty. The fact remains that in 2013 when the learned Magistrate returned the challan for want of explanation, for next three years no steps, whatsoever, were taken by the senior officials, even if presuming that Investigation Officer either was transferred or retired.

10. For such a negligent and callous attitude this Court cannot be a mute spectator and it is a fit case wherein the matter needs to be placed before the Commissioner of Police, Bombay forthwith.

11. The Commissioner of Police, Bombay shall forthwith cause

preliminary enquiry in the matter and upon identifying the culprit/officials, who have committed default in performing statutory duty shall order further disciplinary enquiry against the officials, if he thinks fit, in the facts and circumstances of the case.

12. It is expected of the Commissioner of Police, Bombay to submit an action taken report in this matter, in any case, within a period of three months from today.

13. With above observations, Writ Petition stands dismissed.

14. The Registrar (Judicial-I), High Court, Bombay shall ensure the compliance of this order.

15. The learned APP assures this Court to communicate this order to the Commissioner of Police, Bombay.

(NITIN W. SAMBRE, J.)