

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.M.P.Nos.16123 to 16127/2017 and 1101 of 2018
in

Cr.RC.SR.Nos.57171, 57173, 57164, 57169, 57166 & 47633/2017
Crl.M.P.Nos.16123/2017 in CRL.RC.SR.57171/17

State Represented by

The Public Prosecutor, High Court of Madras,

(E.O.W.-II, Cuddalore, Cr.No.7/2004).. Petitioner/Complainant

vs.

Bhavani

.. Respondent/Accused 5

PRAYER: Criminal Miscellaneous Petition filed under Section 5 of the Limitation Act to condone the delay of 906 days in preferring revision against the order passed by the Court of the Special Judge under TNPID Act, Chennai-104 in Crl.M.P.No.648/2014 in C.C.No.31/2006 dated 22.03.2016.

THE STATE REPRESENTED BY ... Petitioner/Complainant
THE PUBLIC PROSECUTOR HIGH COURT MADRAS.
(E.O.W-II CUDDALORE CR.NO.7/2004).

Vs

USHA

... Respondent/Accused A-4

Petition filed Under Section 5 of Limitation Act to condone the delay of 906 days in preferring Revision against the order dated 22.03.2016 made in Crl.M.P.No.647/2014 in C.C.No.31/2006 on the file of the Special Judge, under TNPID Act, Chennai.

CRL.MP.NO.16125 of 2017 in Crl.RC.NO.57164 of 2017

THE STATE REPRESENTED BY
THE PUBLIC PROSECUTOR HIGH COURT OF MADRAS.
(E.O.W-II, CUDDALORE. CR.NO.7/2004)

.... Petitioner/Complainant

Vs

S.ASHOK

... Respondent/Accused A-19

Petition filed Under Section 5 of Limitation Act to condone the delay of 768 days in preferring the Revision against the order dated 07.08.2015 in Crl.M.P.No.487 of 2015 in C.C.No.31/2006 on the file of the Special Judge, under TNPID Act, Chennai.

CRL.MP.NO.16126 of 2017 in CRL.RC.NO.57169 OF 2017:

THE STATE REPRESENTED BY
THE PUBLIC PROSECUTOR HIGH COURT MADRAS
(EOW-II CUDDALORE CR.NO. 7 OF 2004)

... Petitioner/Complainant

Vs

1 S.NATARAJAN

... Respondent/Accused A-6

Petition filed Under Section 5 of Limitation Act to condone the delay of 1303 days in preferring revision against the order dated 18.02.2014 made in Crl.M.P.No.1655 of 2013 in C.C.No.31 of 2004 on the file of the Special Judge, Under TNPID Act, Chennai.

CRL.MP.NO.16127 of 2017 in CRL.RC.NO.57166 OF 2017

THE STATE REPRESENTED BY
THE PUBLIC PROSECUTOR HIGH COURT MADRAS
E.O.W-II CUDDALORE.CR.NO.7 OF 2004

.... Petitioner/Complainant

Vs

BALAMURUNTHAN

... Respondent/Accused A-18

Petition filed Under Section 5 of Limitation Act to condone the delay of 903 days in preferring revision against the order dated 22.03.2016 made in Crl.M.P.No.1393 of 2015 in C.C.No.31 of 2006 on the file of the Special Judge, Under TNPID Act, Chennai.

CRL.MP.NO.1101 of 2017 in CRL.RC.NO.47633 OF 2017

PONDICHERRY NIDHI LTD.
CUDDALORE BRANCH DEPOSITORS,
WELFARE ASSOCIATION,
REP.BY ITS PRESIDENT S.RAMACHANDRAN

... Petitioner

Vs

1 S.NATARAJAN

2 THE STATE REP. BY ITS
THE SUPERINTENDENT OF POLICE ECONOMIC
OFFENCES WING II CHENNAI-2 CRIME NO.7 OF
2004 (I/C.E.O.W.II CUDDALORE) ... Complainant

Petition filed Under Section 5 of Limitation Act to condone the delay of 1257 days in filing the Criminal Revision Petition against the order dated 18.02.2014 made in Crl.M.P.No.1655 of 2013 in C.C.No.31 of 2006 on the file of the Special Judge for TNPID ACT CASES, CHENNAI.

(MP.Nos.16123 to 16127 of 2017)

For Petitioner : Mr.G.Harihara Arun Somasankar
Government Advocate (Crl. Side)
Mr.N.Manokaran (MP.No.1101/2018)

For Respondent : Mr.Sarath (in all MPs)
for Mr.K.Govindaraj

COMMON ORDER

The Criminal Miscellaneous Petitions on hand in Crl.M.P.No.16123 to 16127 of 2017 filed by the Inspector of Police seeking to condone the delay of 906 days caused in filing Criminal Revision Petitions in Crl.R.C.SR.Nos.57171, 57173, 57164, 57169 and 57166 of 2017 respectively and Crl.M.P.No.1101 of 2018 filed by the de-facto complainant PNL Nithi Limited to condone the delay of 1257 days caused in filing Criminal Revision Petition in Crl.R.C.SR.No.47633 of 2017 are found to be filed by the petitioners praying for identical relief and such that arise out of same set of facts.

2.More so, all these Revisions are supposed to be preferred assailing the orders of the Learned Special Judge, TNPID dated 22.03.2016 discharging the respective respondents herein from C.C.No.31 of 2006 on the file of the Special Court for TANPID ACT. Thus all these petitions are taken up for hearing together and are disposed by a Common Order.

3.The Petitioner herein aggrieved over the discharge of respondents, who were arrayed as accused ranked as 4, 5, 6, 18 and 19 respectively is before this Court by filing the above Revisions petitions. However the revision petitions were not preferred within the prescribed limitation and are filed with 906 days delay, for which the instant miscellaneous petitions are filed to condone the delay of 906 days.

4. In yet another CrI.M.P.No.1101 of 2018 in CrI.R.C.Sr.No: 47633 of 2017 is filed by the depositor's association with a delay of 1257 days as against the discharge of A6. Hence the said CrI.M.P is also clubbed with the above Miscellaneous petitions are heard together.

5. The brief facts required for the disposal of the instant miscellaneous petitions is as following that a case in Crime No.7 of 2004 U/s 5 of TNPID and U/s 409 & 420 IPC against one "PNL Nithi Ltd" company came to be registered in EOW-I Cuddalore, by arraying the said company as first accused and its associates as A-2 to A-19.

6. According to the prosecution the accused A2 to A19 are associates of the company and have collected deposits in the name of "PNL Nithi Ltd" from about 500 depositors by way of attracting Schemes and services with assurance of returning the deposits with 11 to 12 % interest over the deposited amount. However, they have not returned either the principal amount or interest within the time as assured. Thereby they cheated the depositors and the above case came to be registered and after investigation was Charge sheeted in C.C.No.31 of 2006 on the file of the Special Court for TANPID ACT for the Offences under Section 5 of TNPID and Section 120 r/w 420 IPC & Sec 34 r/w 409 of IPC. The respondents being associates of PNL Nithi Ltd Company were accused with rank 5, 6, 18 & 19 respectively corresponding to their role in the above Offence.

7. Whereas the respondents herein by denying the allegation leveled against them filed discharge petitions U/s 239 of Cr.P.C to discharge them from C.C.No.31 of 2006. The said applications were duly contested by the prosecution and as well as the depositors, after keen contest those applications came to be allowed vide orders dated 22.03.2016 whereby the Learned Special Judge, TNPID discharged the respondents herein from C.C.No.31 of 2006. According to the prosecution the applications came to be allowed on misconception of law and facts and hence aggrieved over the same the petitioner is before this Court by way of filing these Revision petitions with delay.

8. I heard Mr.G.Harihara Arun Somasundar, learned Government Advocate (CrI.Side) for the petitioner in MP.Nos.16123 to 16127/2017, Mr.N.Manokaran, learned counsel for the petitioner in MP.No.1101/ 2018 and Mr.Sarath for Mr.K.Govindaraj, learned counsel for the respondent in all the M.P.s and perused the records.

9.The Learned Counsel for the petitioner would submit that the delay caused in filing the above revision petitions is because of the inaction of the Sub Ordinate Officer, who was entrusted with the conduct of the case. The allowing of the applications on 22.03.2016 came to knowledge of the Investigation Officer who laid the Charge, only in the month of September 2016.

10.Yet another reason stated by the petitioner is that there was a delay on administrative side, since the sanction to file revision petition involved step by step sanction by the authorities concerned. By contending as above, the Learned Counsel for the petitioner submitted that the delay caused is neither willful nor wanton, but only due to the above administrative procedure and hence pray to allow the Miscellaneous applications for condonation of delay.

11.Per Contra, the Learned Counsels for the respondents filed counter and contended that the reasons stated by the petitioner are untrue and liable to be rejected. The reasons stated by the petitioner are not bonafide and is not liable to be condoned. The Learned Counsels for the respondents made much reliance upon the decision the Hon'ble Division Bench of the Apex Court made in the matter of Office of The Chief Post Master General & Ors. Vs. Living Media India Ltd & Anr reported in 2012 3 SCC 563 wherein the Hon'ble Apex Court was pleased to hold as following that

"9. In view of the stand taken by the Postal Department as to the reasons for the delay and the serious objections of the Respondents, it is desirable to extract the entire statement as placed in the form of "better affidavit" by the officer of the Appellant-Department:

I, Aparajeet Pattanayak presently posted as SSRM, Air Mail Sorting Division, New Delhi, do hereby solemnly affirm and state as under:

1. In the official capacity mentioned above, I am acquainted with the facts of the case on the basis of the information derived from the record.

2. On the last date of hearing i.e. 05.12.2011 this Hon'ble Court was pleased to allow the petitions to file better affidavit in support of the application for condonation of delay in filing Special Leave Petition.

3. It is submitted that the delay is not intentional but is on account of the departmental/administrative procedures involved in for filing the petition for Special Leave Petition. It is submitted that unlike the private litigant the matters relating to government are required to be considered at various levels and then only a decision is taken.

4. In the present case it would be evident from the following that delay has been caused due to unavoidable circumstances:

11.09.2009- Date of judgment in LPA Nos. 418/2007 and 1006/2007.

29.10.2009- Certified copy of judgment not received from the Government counsel and hence copy of judgment was downloaded from the web site of Delhi High Court and office note was put by ASP (Court) proposing to refer the matter to Postal Directorate for opinion and further course of action for approval of the Chief Postmaster General, Delhi.

12.11.2009 - Chief Postmaster General Delhi approved to refer the matter to Directorate.

16.12.2009 - Directorate desired to submit legal opinion and certified copy of judgment.

08.01.2010 - The counsel appearing on behalf of the Petitioner had applied for the certified copy of the impugned judgment and order and the same was received by the Department on 08.01.2010.

11.01.2010- The desired documents supplied to Directorate.

25.01.2010 - Directorate desired to submit copies of original writ petition filed by the party, counter affidavit thereto, copies of appeals filed by DOP & counter reply thereto.

12.02.2010 - The desired documents supplied to Directorate.

17.02.2010 - Directorate desired to send an official/officer well conversant with the case.

15.03.2010 - Directorate asked to depute an officer well conversant with the case to collect the UO Note along with other documents to pursue the matter with Mr. Suresh Chandra Additional Legal Advisor.

06.04.2010 - Shri Suresh Chandra, Additional Legal Advisor was contacted on 06.04.2010 and the matter was

briefed thoroughly by ASP (Court).

25.06.2010 - Case file collected from Directorate and handed over to Central Agency Section on 25.06.2010 under diary No. 1865/2010 dated 25.06.2010 as per advice of Additional Legal Advisor.

26.06.2010 to 30.06.2010 - Central Agency Section sent the file back to the Postal Department with directions to send the same through Ministry of Law and Justice.

01.07.2010 to 10.09.2010 - After receiving the file through proper channel. Central Agency Section sent the file to Ld ASG for his considered opinion and Ld. Additional Solicitor General opined that it is a fit case for filing the Special Leave Petition.

11.09.2010 to 30.09.2010 - On receiving the opinion of Ld. ASG the file was sent to Central Agency for drafting the Special Leave Petition.

01.10.2010 - Directorate informed that ASG had considered the case and found it fit for Special Leave Petition.

15.11.2010 - The panel counsel prepared the draft of Special Leave Petition and submitted the draft Special Leave Petition with file to Central Agency Section for further steps. The draft Special Leave Petition was forwarded to the Department by Central Agency Section for vetting. After factual verification, the draft Special Leave Petition was returned to Central Agency Section for typing and preparation of Paper Book which also took some time.

04.01.2011 - Special Leave Petition remained pending due to non-availability of disputed magazines of Readers Digest and India Today. Hence, ASG was requested to intervene and direct Shri Akash Pratap who handled the case to provide the magazines

14.01.2011 - Shri A.K. Sharma was requested to arrange to collect the above magazines from the record of Delhi High Court.

31.01.2011 - SSRM Delhi Sorting Division was authorized to sign the affidavit on behalf of the Respondent.

10.02.2011 - Special Leave Petition filed in Supreme Court.

5. It is submitted that it is evident from the foregoing reasons that the delay caused in filing the petition was result of all the necessary and

unavoidable office formalities and was bonafide and not deliberate or intentional and the Petitioner was prevented by sufficient cause from filing the petition within the period of limitation."

12. It is the contention of the Learned Counsel for the Respondent that after considering the above submissions made by the Postal Department, the Hon'ble Apex Court by holding as extracted hereunder that

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide 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. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by

the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

13. The Learned Counsel for the respondent further made reliance upon yet another decision of the Hon'ble Division Bench of the Apex Court made in the matter of Office of Pundlik Jalam Patil (D) by Lrs Vs Exe. Eng. Jalgaon Medium Project & Anr, reported in 2008 17 SCC 448, wherein it held as following that

"..... in the application filed in the High Court the plea taken by the respondent is as under:

"The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent no. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award."

This averment in the application on the face of it is totally incorrect.

12. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition.

It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the

delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning."

14.From the above settled preposition, it is needless for this Court to say that a delay is to be condoned in appropriate cases where the delay might be because of some bonafide reasons or of sufficient cause, Whereas in cases of unexplainable and unacceptable reasons delay cannot be condoned as a routine manner and that as in the words of the Hon'ble Apex Court "it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide 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. The Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments.

15.It is noteworthy that though it is contended by the petitioner as such the delay was caused due to failure of his Sub Ordinate Officer that after a lapse of about one and a half year i.e only in the month of September 2016, he had chosen to inform his superior about the order of discharge dated 22.03.2015, in the case on hand nothing was brought on record to show that any disciplinary action was taken against the negligent and errant Officer in this regard.

16.If such contention of the petitioner is accepted, in majority of cases especially pertaining to State, a higher authority by merely pointing his finger over his subordinate will be able to come up with similar plea to condone inordinate delay and at the same time the Subordinate Officers may become lethargic if such reasons are accepted by the Court as "Sufficient Cause".

17.At this juncture at the cost of repetition this Court like to emphasis para 29 of the decision of Hon'ble Apex Court in the matter of Office of The Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. holding that "it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide 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. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments". It is needless to say that law of limitation undoubtedly binds everybody including the Government. In the case on hand besides furnishing some dates, there is no valid reason whatsoever for the inordinate delay of 906 days in filing these Revisions.

18.Further, with regard to the delay of 1257 days petition filed by the de-facto complainant is concerned, this court finds that the petitioner has not given any sufficient, satisfactory and convincing reason. Since the petitioner has given only reason that the petitioner has not aware about the discharge petition filed and ordered on 22.03.2016. therefore, the delay of 1257 days was arosed. The Hon'ble Supreme Court very categorically held that each and every day delay should be explained by the petitioner. But for the huge delay of 1257 days, the petitioner/PNL Nithi Limited has not given any satisfactory and convincing reason. It is a well considered principle of law that the delay cannot be condoned mechanically without having proper reason.

19.Therefore, having find no bonafide reason or sufficient cause put forth by the petitioner in all these miscellaneous petitions condone the inordinate delay in filing the unnumbered criminal revision petitions, I am of the view that the miscellaneous petitions for condonation of delay is liable to be rejected and hence all the unnumbered criminal revision petitions are liable to be rejected.

20.Accordingly, all the Miscellaneous Petitions for condonation of delay are dismissed and consequently the unnumbered Criminal Revision Petitions are rejected.

Sd/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1.The Special Judge under TNPID Act, Chennai-104.

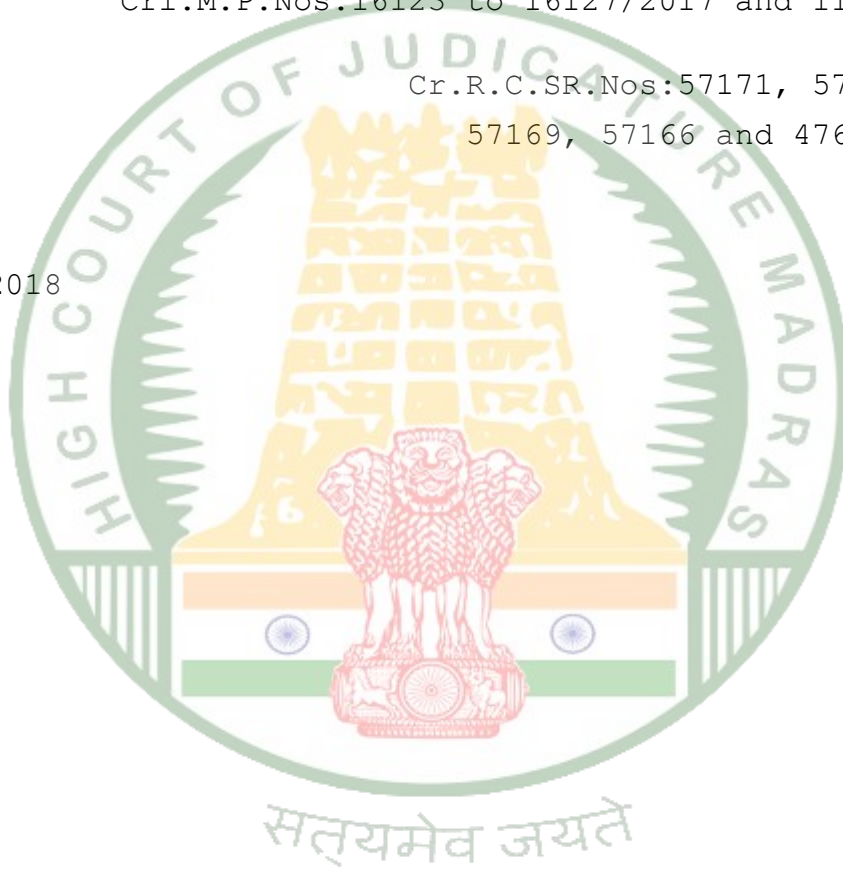
2.The Superintendent of Police,
Economic Offenses Wing II,
Chennai-2

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.K.Govindaraj, Advocate sr.no.14379

Pre-Delivery Judgment made in
Crl.M.P.Nos.16123 to 16127/2017 and 1101 of 2018
in
Cr.R.C.SR.Nos:57171, 57173, 57164,
57169, 57166 and 47633 of 2017

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