



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Monday, the Second day of July Two Thousand Eighteen

PRESENT

WEB COPY

The Hon`ble Mr Justice S.VAIDYANATHAN

WMP (MD) No.5144 of 2018

IN

REV.APLW (MD) No.SR 11949 of 2018

1 THE DIRECTOR GENERAL OF POLICE,
KAMARAJAR SALAI, MYLAPORE,
CHENNAI - 600 004.

2 THE DEPUTY INSPECOTR OF POLICE,
MADURAI RANGE, MADURAI.

3 THE SUPERINTDENT OF POLICE,
VIRUDHUNAGAR DISTRICT,
VIRUDHUNAGAR.

... PETITIONERS/ PETITIONERS/
RESPONDENTS

Vs

R.SARAVANAKUMAR

... RESPONDENT/ RESPONDENT/
PETITIONER

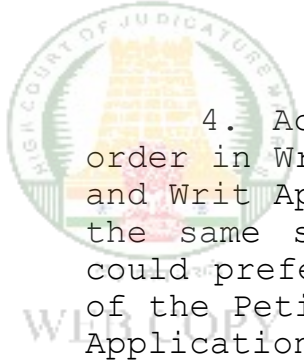
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 1449 days in filing review petition filed against the order passed in the W.P.(MD).No.3332 of 2011 dated 17.02.2014.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mrs.S.SRIMATHY, Special Government Pleader for the petitioners and of Mr.AJMAL KHAN, Senior Counsel for Mr.S.SELVAKUMAR, Advocate on behalf of the Respondent, the court made the following order:-

This matter is taken up for hearing today through 'Video Conferencing'.

2. This Petition is filed seeking to condone the delay of 1449 days in filing a Review Petition against the order dated 17.02.2014 passed in W.P.(MD) No.3332 of 2011.

3. Heard Mrs.S.Srimathy, learned Special Government Pleader for the petitioners/Government and Mr.Ajmal Khan, learned Senior Counsel appearing for the Respondent/Writ Petitioner.



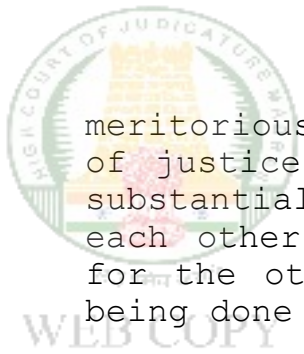
4. According to the learned Special Government Pleader, the order in Writ Petition (MD) No.3332 of 2011 was passed on 17.02.2014 and Writ Appeal (MD) No.1125 of 2014 was preferred on 22.07.2014 and the same stood dismissed on 19.04.2017. However, the Department could prefer a Review Petition only on 01.08.2017. It is the case of the Petitioners herein that the delay caused in filing the Review Application was due to administrative procedures and that the Madurai Bench of this Court ordered condonation of delay vide order dated 03.02.2018 in Review Application No.08/2018, directing the Petitioners to file fresh Review Petition to review the order dated 17.02.2014 passed in W.P.(MD) No.3332 of 2011, instead of reviewing the order dated 19.04.2017 passed in W.A. (MD) No.1125 of 2014.

5. Pursuant to the disposal of the Writ Appeal that was filed with delay, a Review Petition was filed with delay and a Division Bench of the Madurai Bench of this Court condoned the delay. Once, delay has been condoned, this Court cannot go into the delay aspect. Even though this Petition is filed seeking to condone the delay of 1449 days in filing the Review Petition, admittedly, there is no delay at all.

6. As regards delay, it is worth referring to the Apex Court decision in the case of N.Balakrishnan vs. M.Krishnamurthy, reported in (1998) 7 SCC 124, wherein, it is held as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

7. The Apex Court in the case of Collector, Land Acquisition, Anantnag and another vs. Mst.Katiji and others, reported in (1987) 2 SCC 107, has held that, refusing to condone delay can result in a



meritorious matter being thrown out at the very threshold and cause of justice being defeated. It is further held therein that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

8. Further, in the case of Ramlal, Motelal and Chhotelal vs. Rewa Coalfields Ltd., reported in AIR 1962 SC 361, the Apex Court has categorically held as to how the delay has to be calculated. The period of delay between the last date for filing the Appeal and the date on which, the Appeal was actually filed should be taken into account and the time granted for preferring an Appeal has to be excluded while computing the delay. This question does not arise in the case on hand, as, admittedly, the present Review Petition has been filed within 30 days from the date of the order (i.e. 08.02.2018) passed by the Division Bench in Review Application No.8/2018 in W.A.(MD) No.1125 of 2014.

9. Even though the Government has come up with the above Petition with a delay of 1449 days, there is no delay at all. After this Court was inclined to allow this Petition, learned Senior Counsel appearing for the Respondent/Writ Petitioner stated that he has no objection for the delay being condoned. Hence, in view of the above, the delay is condoned.

This Miscellaneous Petition is ordered accordingly.

sd/-
02/07/2018

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

TO

1 THE DIRECTOR GENERAL OF POLICE,
KAMARAJAR SALAI, MYLAPORE,
CHENNAI - 600 004.

2 THE DEPUTY INSPECTOR OF POLICE,
MADURAI RANGE, MADURAI.

3 THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR.

COPY TO: THE SECTION OFFICER, WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDERIN
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Date :02/07/2018