



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

Thursday, the Twenty Second day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL MP(MD) No.8544 TO 8547 of 2017

IN

CRL RC(MD) No.SR26893, 26898, 26889, 26884 of 2017

STATE REPRESENTED BY
THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS-600 104,
(V & A.C., DINDIGUL
CRIME NO.1/2012)

... PETITIONER/COMPLAINANT
IN ALL THE PETITIONS

Vs

P.SUSEELA ... RESPONDENT/ACCUSED (A-2)
in CRL MP(MD).8544/2017 IN CRL RC(MD) No.SR26893/2017

I.P.PRABHU ...RESPONDENT/ACCUSED (A-4)
in CRL MP(MD).8545/2017 IN CRL RC(MD) No.SR26898/2017

I.PERIASAMY ..RESPONDENT/ACCUSED (A-1)
in CRL MP(MD).8546/2017 IN CRL RC(MD) No.SR26889/2017

I.P.SENTHILKUMAR ...RESPONDENT/ACCUSED (A-3)
in CRL MP(MD).8547/2017 IN CRL RC(MD) No.SR26884/2017

Prayer in CRL MP(MD). 8544/ 2017 IN CRL RC(MD) No.SR26893/2017:
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 47 days in filing the Revision against the order passed in Crl.M.P.No.598 of 2016 (Common order passed in Crl.M.P.Nos.1164, 598, 1165 & 773 of 2016) on the file of the Chief Judicial Magistrate Cum Special Judge for prevention of Corruption Act Cases, Dindigul, dated 28.04.2017.

Prayer in CRL MP(MD). 8545/ 2017 IN CRL RC(MD) No.SR26898/2017:
To condone the delay of 47 days in filing the Revision against the order passed in Crl.M.P.No.773 of 2016 (Common order passed in Crl.M.P.Nos.1164, 598, 1165 & 773 of 2016) on the file of the Chief Judicial Magistrate Cum Special Judge for prevention of Corruption Act Cases, Dindigul, dated 28.04.2017.



Prayer in CRL MP(MD). 8546/ 2017 IN CRL RC(MD) No.SR26889/2017:
To condone the delay of 47 days in filing the Revision against the order passed in Crl.M.P.No.1164 of 2016 (Common order passed in Crl.M.P.Nos.1164, 598, 1165 & 773 of 2016) on the file of the Chief Judicial Magistrate Cum Special Judge for prevention of Corruption Act Cases, Dindigul, dated 28.04.2017

Prayer in CRL MP(MD). 8547/ 2017 IN CRL RC(MD) No.SR26884/2017 :

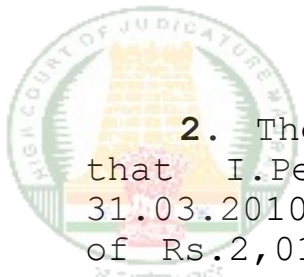
To condone the delay of 47 days in filing the Revision against the order passed in Crl.M.P.No.1165 of 2016 (Common order passed in Crl.M.P.Nos.1164, 598, 1165 & 773 of 2016) on the file of the Chief Judicial Magistrate Cum Special Judge for Prevention of Corruption Act Cased, Dindigul, dated 28.04.2017.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.C.MAYILVAHANA RAJENDRAN, Additional Public Prosecutor for the petitioner in all the petitions and of MR.V.KARTHICK Senior Scounsel for MR.A.K.MANICKAM, Advocate for the Respondent in CRL MP(MD). 8544/2017 IN CRL RC(MD) No.SR26893/2017 and of MR.V.VELUCHAMY, Advocate for the Respondent in CRL MP(MD). 8545/2017 IN CRL RC(MD) No.SR26893/2017 and of MR.R.SHANMUGASUNDARAM, Senior Counsel for MR.S.RAVI, Advocate for the Respondent in CRL MP(MD). 8546/2017 IN CRL RC(MD) No.SR26889/2017 and of MR.C.ARULVADIVEL @ SEKAR, Advocate for the Respondent in CRL MP(MD). 8547/2017 IN CRL RC(MD) No.SR26884/2017 the court made the following order:-

Reserved on	Pronounced on
16.02.2018	22.02.2018

The factual matrix of the case is as under:-

The Deputy Superintendent of Police, Vigilance and Anti-Corruption registered a *suo motu* First Information Report in Crime No.1 of 2012, on 08.03.2012 and after completing the investigation, filed a final report in Special Case No.27 of 2014 before the Chief Judicial Magistrate/Special Judge, Dindigul, for the offences under Sections 120-B, 109 IPC and 13 (2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, against I.Periyasamy, P.Suseela, W/o.I.Periyasamy, I.P.Senthilkumar, S/o.I.Periyasamy and I.P.Prabhu, S/o.I.Periyasamy.



2. The long and short of the case of the prosecution is that I.Periyasamy [A-1] was Minister from 13.05.2006 to 31.03.2010 and during that period, he amassed wealth to a tune of Rs.2,01,35,152.16 [187.25%], disproportionate to his known source of income and that the accused Nos.2 to 4 had abetted him in the said offences. After the receipt of summons, accused Nos.1 to 4 filed individual discharge applications under Section 239 of the Code of Criminal Procedure, namely, CrI.M.P.Nos.1164, 598, 1165 and 773 of 2016, for discharging them from the prosecution and the Trial Court, by order dated 28.04.2017, allowed the discharge applications and discharged them from the prosecution in Special Case No.27 of 2014. Challenging the order of discharge, the State has filed four Criminal Revision Cases each with a delay of 47 days. Therefore, the State has filed the above Criminal Miscellaneous Petitions under Section 5 of the Limitation Act, 1963, [for brevity, "the Act"], for condoning the delay of 47 days in filing the Criminal Revision Cases against the order of discharge passed by the Trial Court.

3. Heard Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the State, Mr.V.Karthick, learned Senior Counsel, representing Mr.A.K.Manickam, learned counsel on record for P.Suseela, Mr.K.Veluchamy, learned counsel appearing for I.P.Prabhu, Mr.R.Shanmugasundaram, learned Senior Counsel representing Mr.S.Ravi, learned counsel on record for I.Periyasamy and Mr.C.Arul Vadivel @ Sekar, learned counsel appearing for I.P.Senthilkumar.

4. In support of the Criminal Miscellaneous Petitions for condonation of delay, M.Sathyaseelan, Deputy Superintendent of Police, Vigilance and Anti-Corruption, has sworn to an affidavit dated 11.08.2017, wherein in Paragraph No.2, he has stated as follows:-

"I submit that in this case, the order was passed by the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act, Cases, Dindigul, on 28.04.2017 in CrI.M.P.Nos1164 of 2016 [Common Order passed in CrI.M.P.Nos.1164, 598, 1165 and 773 of 2016], dated 28.04.2017. The certified copy of the order was applied by the the investigation officer on 28.04.2017 and obtained the same on 29.04.2017. Subsequently, the order copies were got back the Court for making corrections in the common order by its office note dated 05.05.2017 and handed over the corrected common order dated 15.05.2017. I

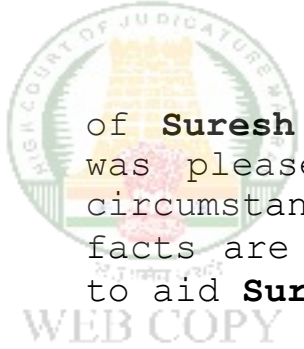


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further that after obtaining the certified copy of the Judgment, an opinion was sought for from the Deputy Legal Advisor, Vigilance and Anti-Corruption, Dindigul and he offered his opinion, on 06.06.2017. After obtaining the opinion from the Deputy Legal Advisor for filing appeal in this case, proposal was sent to the Director of Vigilance and Anti-Corruption, Chennai on 09.06.2017 and the Director of Vigilance and Anti-Corruption, Chennai, sent the proposal to the Principal Secretary to Government, Public (SC) Department, Secretariat, Chennai, 18.07.2017, vide letter No.Rc.No.47/12/PUB//HQ, dated 18.07.2017. The Government sent the proposal to the office of the Public Prosecutor, High Court Madras, vide letter No.AC/1068-53/2011, dated 28.07.2017 and the same was received by the Public Prosecutor's Office, High Court, Madras, on 31.07.2017. After perusing the entire records, the Public Prosecutor, High Court, Madras, thought that this is a fit case for filing an appeal against acquittal and appeal against acquittal is being filed on 13.09.2017 before the Hon'ble Madurai Bench of Madras High Court, Madurai".

5. Mr.R.Shanmugasundaram, learned Senior Counsel representing Mr.S.Ravi, learned counsel on record for I.Periyasamy, submitted that the State has failed to explain the reasons for every day's delay and that the provisions of Section 5 of the Act should be applied strictly and the delay should not be condoned. He sought to distinguish the law laid down by the Supreme Court in **State of Tamil Nadu Vs. N.Suresh Rajan and others [2014 (3) SCC (crl) 529 : 2014 (11) SCC 709**, by contending that the power of the Supreme Court to condone the delay for admitting a Special Leave Petition cannot be equated to the power of this Court to condone the delay under Section 5 of the Act.

6. Mr.V.Karthick, learned Senior Counsel, representing Mr.A.K.Manickam, learned counsel on record for P.Suseela, submitted that the vigilance should also be vigilant. He submitted that there is no application of mind by the officer, who has sworn to the affidavit, inasmuch as in Paragraph Nos.2 and 3, he has stated that he is filing an appeal against acquittal, but, whereas what has been filed is a revision against acquittal. He placed strong reliance on Paragraph No.13



of **Suresh Rajan [supra]** and submitted that the Supreme Court was pleased to condone the delay in the peculiar facts and circumstances of that case, but, whereas, in this case, the facts are simple and straight and hence, the State cannot call to aid **Suresh Rajan [supra]**.

7. He placed strong reliance on the Judgment of the Supreme Court in **Post Master General Vs Living Media India Limited and another**, [2012 (3) SCC 563]; **Amar Nath Yadav Vs. State of UP**, [2014 (2) SCC 422] and **State of Rajasthan Vs. Bal Kishan Mathur**, [2014 (1) SCC 592] and read out some passages from those Judgments to contend that the procedural red tape cannot be a reason for condonation of delay. He also sought to distinguish the Judgment of the Supreme Court in **State of Jharkhand Vs. Lalu Prasad Yadav Alias Lalu Prasad** [2017 (8) SCC 1], wherein, the Supreme Court appears to have censured the Central Bureau of Investigation for not being vigilant in prosecuting the case.

8. Mr.C.Arul Vadivel @ Sekar, learned counsel appearing for I.P.Senthilkumar. submitted that the Criminal Revision Cases themselves are not maintainable, since in the cause-title of the Criminal Revision Cases and in the Criminal Miscellaneous Petitions for condonation of delay, the petitioner has been shown as "State, represented by the Public Prosecutor". The learned counsel submitted that only if an appeal is filed against acquittal, under Section 378 of the Code of Criminal Procedure or a petition is filed for enhancement of sentence, under Section 377 of the Code of Criminal Procedure, can the Public Prosecutor represent the State. He read Section 24 of the Code of Criminal Procedure and submitted that the Public Prosecutor can only conduct the case and not represent the State. He also sought to distinguish the statement of law in **K.Anbzhagan Vs. Superintendent of Police** [2004 SCC (Cr1) 882], wherein the Supreme Court had approved the filing of transfer application by Anbalagan, the Leader of opposition, on the ground that it was he, who set the law into motion and submitted that **K.Anbzhagan [supra]** arose under Section 406 of the Code of Criminal Procedure, when the expression "party interested" finds place and there is no such an analogous expression in Section 397 of the Code of Criminal Procedure.

9. Mr.K.Veluchamy, learned counsel appearing for I.P.Prabhu, submitted that no reasons have been given in the affidavit for the delay, that had occurred from 31.07.2017 to 11.08.2017, when the matter was admittedly with the office of the Public Prosecutor.



10. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, refuted the contentions and placed strong reliance upon the Judgment in **Lalu Prasad [supra]** and submitted that an offender should not be allowed to escape from the clutches of law on technical grounds.

11. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

12. The petitions, that have been filed before this Court, are one under Section 397 of the Code of Criminal Procedure. Section 397(1) reads as follows:-

"Calling for records to exercise powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record".

13. Thus, unlike Sections 378 and 377 of the Code of Criminal Procedure, Section 397 Cr.PC., neither specifies nor categorizes the persons, who can file a Criminal Revision Case. In fact, the High Court can *suo motu* entertain a Criminal Revision Case, if it finds that an illegality or impropriety has been committed by a Court below. In this case, the affidavit filed in support of the delay condonation application has not been sworn to by the Public Prosecutor, but, has been sworn to by the Deputy Superintendent of Police, Vigilance and Anti-Corruption. Thus, it is the Vigilance and Anti-Corruption, which is prosecuting the Criminal Revision Case and the reference, "State, represented by the Public Prosecutor" in the cause-title cannot be interpreted to mean that the Public Prosecutor, on his own motion, is prosecuting the Criminal Revision Case. That apart, a Public Prosecutor cannot be construed as a stranger to a criminal litigation. He also has a duty to ensure that an illegality or impropriety in the order



of a Court below does not go unchallenged. Therefore, this Court does not find any infirmity in the format and structure of the Criminal Revision Case for dismissing it.

14. Coming to the various Judgments relied upon by the learned counsel for the defence, it is seen that in **Post Master General [supra]**, deals with a delay of 427 days in filing a Special Leave Application in a civil litigation between the Postal Department and a private party, by name, Living Media India Limited.

15. In **Amar Nath Yadav [supra]**, there was a delay of 481 days in respect of a Labour Court Award matter. In **Bal Kishan Mathur, [supra]**, there was a delay of 98 days in filing an intra-Court appeal, which was not condoned by the Rajasthan High Court. However, the Supreme Court has observed in Paragraph No.9 that the delay should have been condoned, taking into account the totality of the facts of the case and therefore, the Supreme Court set aside the order passed by the Division Bench of the Rajasthan High Court and had remitted the matter back to the High Court. Thus, in the above three cases, the litigations were civil litigations and in the first two cases, the delays were enormous.

16. In **Suresh Rajan [Supra]**, there was a delay of 1954 days in filing the petition, challenging the order of discharge in a Prevention of Corruption Act case. The Supreme Court considered **Post Master General [supra]** and other cases and condoned the delay and set aside the order of the High Court and directed the accused to face the trial.

17. In **Lalu Prasad Yadav [supra]**, the Supreme Court, after considering all the earlier cases, including **Suresh Rajan [supra]**, has held in Paragraph Nos.66 and 67 as follows:-

"66. On the other hand, learned Solicitor General has submitted that delay deserves to be condoned. He has relied upon the decision of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* (2007) 7 SCC 394 in which it has been observed that in serious offences, prosecution is done by the State and the court of law should not throw away prosecution solely on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case. He has also referred to *Sajjan Kumar v. Union of India* (2010) 9 SCC 368 to contend that a prosecution should not be quashed merely on



the ground of the delay. The aforesaid decisions cited of **Japani Sahoo and Sajjan Kumar** (supra) are with respect to the delay in institution of the case not with respect to sufficient cause in filing of appeals. However, reliance on the **State of Tamil Nadu v. M. Suresh Rajan (2014) 11 SCC 709** is apt in which the time consumed in taking opinion on change of Government was held to be sufficient cause so as to condone the delay. Reliance has also been placed on **Indian Oil Corporation Ltd. & Ors. v. Subrata Borah Chowlek, etc. (2010) 14 SCC 419** in which there was a delay in filing the appeals in which this Court has observed that Section 5 owes no distinction between State and citizen. The Court has to ensure that owing to some delay on part of the machinery, miscarriage of justice should not take place. It is also contended that the power under Section 5 of the Limitation Act should be exercised to advance substantial justice by placing reliance on **State of Nagaland v. Lipok AO & Ors. (2005) 3 SCC 752**.

67. In view of the averments made in the applications we are satisfied that delay has been sufficiently explained and considering the facts and circumstances of the case, gravamen of matter and also the divergent views taken by the same Judge of the High Court in the same case vis a vis different accused persons on same question, we consider it our duty not to throw away petition on the ground of delay. The explanation offered by the CBI of movement of file so as to condone the delay so as to subserve the ends of justice, deserves to be accepted. No doubt about it that the CBI ought to have acted with more circumspection and ought to have followed the CBI Manual. It is regrettable that we are receiving majority of the special leave petitions filed in this Court barred by limitation not only on behalf of the Government but also by the other private litigants. Not only that the special leave petitions are preferred with the delay but in refilling also enormous time is consumed and this Court in order to advance substantial



justice is not throwing away cases only on limitation".

18. The contention of the learned counsel for the defence that there should be no distinction between State and citizen has been considered by the Supreme Court in **Lalu Prasad Yadav**, [supra], but, however, the Supreme Court had condoned the delay on the ground that there should not be miscarriage of justice. In fact, the Supreme Court has stated in Paragraph No.68 that the sufficiency of cause has to be judged in a pragmatic manner so as to advance the cause of justice.

19. In this case, the Deputy Superintendent of Police, Vigilance and Anti-Corruption Department, has explained the reasons in Paragraph No.2 of the affidavit as to where all the files went, before the petitions were made ready and filed in the Registry of the Court. It is true that in Paragraph Nos.2 and 3 of the affidavits, the Deputy Superintendent of Police has stated that he is filing an appeal against acquittal, but, however, in the prayer portion of his affidavits, he has clearly stated that "the Court may be pleased to condone the delay of 47 days in filing the Criminal Revision Cases". The reference to the words "appeal against acquittal" in Paragraph Nos.2 and 3 cannot be considered as non-application of mind.

20. In the result, these Criminal Miscellaneous Petitions are allowed and the delay of 47 days in filing the Criminal Revision Cases is condoned.

sd/-
22/02/2018

/ TRUE COPY /

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

NB
TO

1 THE CHIEF JUDICIAL MAGISTRATE
CUM SPECIAL JUDGE FOR PREVENTION OF
CORRUPTION ACT CASES, DINDIGUL.

2 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS-600 104,

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADRAS BENCH OF MADRAS HIGH COURT, MADURAI.



+1cc to MR.A.K.MANICKAM,Advocate in SR.No. 2848

+1cc to MR.S.RAVI ,Advocate in SR.No. 2847

+1cc to MR.C.ARUL VADIVAL @ SEKAR,Advocate in SR.No. 2861

GJM/RR/SAR-3-23.02.2018-10P-7C

ORDER

IN

CRL MP (MD) No.8544 TO 8547 of 2017
IN

CRL RC (MD) No.SR26893, 26898, 26889,
26884 of 2017

Date :22/02/2018